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TABLE OF CONTENTS

Attorney General (June 90 - July 90)	1
Audiology and Speech-Language Pathology, Board of Examiners on (June 90)	245
Game and Fish Department (June 90)	251
Cosmetology, Board of (July 90)	255
Industrial Commission (May 90)	279
Insurance, Commissioner of (June 90 - July 90)	297
Milk Stabilization Board (June 90)	311
Pharmacy, Board of (July 90)	315
Public Instruction, Superintendent of (July 90)	323
Public Service Commission (May 90)	333
Department of Human Services (May 90 - June 90)	551
Oilseed Council (June 90)	635
Workers Compensation Bureau (June 90)	639
Corrections & Rehabilitation, Department of (June 90)	659
Agricultural Products Utilization Commission (June 90)	697
Agriculture, Commissioner of (May 90)	707



TITLE 10
Attorney General

JUNE 1990

10-04.1-01-01. Definitions.

1. "Adjusted gross proceeds" - refer to subsection 1 of North Dakota Century Code section 53-06.1-01.
2. "Admissions" means the price paid to enter a site to play games of chance.
3. "Ante" in poker means a player's initial wager or predetermined contribution to the pot before the first card of the game is dealt.
4. "Attorney general" includes agents of the attorney general.
5. 5. "Bet" in poker means a player's wager to the pot on any betting round.
- ~~5.~~ 6. "Bingo session" means a single gathering at which a series of one or more successive bingo games is played.
- ~~6.~~ 7. "Blackjack" - see "natural twenty-one".
- ~~7.~~ 8. "Blind bet" in poker is a bet made before the first card of the game is dealt.
- ~~8.~~ 9. "Bona fide guest" - refer to subsection 2 of North Dakota Century Code section 53-06.1-01.
10. "Buy-in" in poker is a purchase of chips by a player prior to the player playing.
11. "Call" in poker means a bet made in an amount equal to the immediately preceding bet.

12. "Cash prize" means coin, currency, marketable securities, and any other similar item that can be readily redeemed or converted into legal tender and that is not volatile. Cash prize does not include precious metal bullion or a gift certificate that is redeemable for a merchandise item.
13. "Charitable gaming ticket" - refer to subsection 3 of North Dakota Century Code section 53-06.1-01.
14. "Charitable organization" - refer to subsection 4 of North Dakota Century Code section 53-06.1-01.
15. "Check" in poker means to waive the right to initiate the betting in a round, but to retain the right to call after all other players have either bet or folded. It is synonymous with pass.
16. "Check and raise" in poker means a player raising after the player first checked in a round.
17. "Checker" means a person who records the number of bingo cards played during each game and may record the prizes awarded, but does not collect the cash receipts for the sale of bingo cards nor make the award of the prizes.
18. "Civic and service club" - refer to subsection 5 of North Dakota Century Code section 53-06.1-01.
19. "Community cards" in the poker game of Texas hold'em are cards dealt faceup which can be used by all players to make their best hand.
20. "Compensation" means wages, salaries, bonuses, commissions, tips, benefits, and all other forms of remuneration for services rendered, including employer paid taxes.
21. "Conduct of games of chance" means the ~~actual~~ direct and indirect operation of games of chance. The term "conduct" includes, but is not limited to, the selling of charitable gaming tickets, raffle tickets, rafflewheel tickets, bingo cards, dealing of twenty-one and poker, spinning a rafflewheel, calling of bingo numbers, recordkeeping, purchasing of equipment and supplies, and paying of expenses and eligible use contributions. Conduct does not include the playing of any game of chance.
22. "Current retail price" means the standard price that a merchandise prize could be purchased for in a normal retail transaction. Current retail price is generally not the wholesale or manufacturer's list price.
23. "Deal":

- a. In charitable gaming tickets means each separate package, series of packages, or card consisting of one game of charitable gaming tickets, or lines with the same game serial number purchased from a distributor. Games of "club ~~specials~~ special", "tip ~~boards~~ board", and "seal ~~boards~~ board" which use a seal are included in this definition.
- b. In twenty-one and poker means the distributing of the playing cards among the players.
- ~~23.~~ 24. "Dealer" in twenty-one is the general term for the eligible organization's employee or volunteer that the players bet against. "Dealer" in poker is the general term for the eligible organization's employee or volunteer, or player that deals the playing cards to the players.
- ~~9.~~ 25. ~~"Button"~~ "Dealer-button" in poker is an object which is moved clockwise around the table to denote an imaginary dealer. A button is used when the organization provides a dealer.
- ~~24.~~ 26. "Deuce" in poker is the term for the two.
- ~~25.~~ 27. "Devoted" for class A organizations means the unrestricted disbursement to an eligible use, ~~by check~~ from the general gaming bank account ~~provided in subsection 4 of North Dakota Century Code section 53-06.1-11~~, or for class B organizations it means a transfer of net proceeds to the charitable gaming trust fund bank account.
- ~~26.~~ 28. "Distributor" - refer to subsection 6 of North Dakota Century Code section 53-06.1-01.
- ~~27.~~ 29. "Doubling-down" in twenty-one means the act of a player doubling the amount of the player's original wager on any two card count. When the player doubles-down the player ~~must~~ shall draw one and only one card.
- ~~28.~~ 30. "Draw" in the poker game of draw means the taking of additional cards by the player prior to the second round of betting.
- ~~29.~~ 31. "Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses" - refer to subsection 7 of North Dakota Century Code section 53-06.1-01.
- ~~30.~~ 32. "Educational organization" - refer to subsection 8 of North Dakota Century Code section 53-06.1-01.
- ~~31.~~ 33. "Eligible organization" - refer to subsection 9 of North Dakota Century Code section 53-06.1-01.

- ~~32.~~ 34. "Entire net proceeds" or "net proceeds" - refer to subsection 10 of North Dakota Century Code section 53-06.1-01.
- ~~33.~~ 35. "Equipment" - see gaming equipment.
- ~~34.~~ 36. "Flare" is the posted display with the North Dakota state gaming stamp affixed which sets forth the rules and prizes of a specific game of rafflewheel tickets, punchboards, professional sports-pool boards, ~~or deals~~ calcutta board, commingled game of charitable gaming tickets, including club specials special, tip boards board, and seal boards board. The flare for a game of rafflewheel tickets is the master flare. The flare for a paper-type punchboard is the face sheet of the punchboard. The flare for an electronic punchboard is the punchcard of the punchboard. The flare for a professional sports-pool board is the sports-pool board itself. The flare for a calcutta is the calcutta board itself. The flare for a tip board is the tip board itself. The flare for a seal board is the seal board itself.
- ~~35.~~ 37. "Flop" in the poker game of Texas hold'em means the first three community cards dealt faceup at one time.
- ~~36.~~ 38. "Fold" in poker means to quit contending for the pot and discarding a player's hand during any betting round. A player would fold the player's hand by refusing to match a bet.
- ~~37.~~ 39. "Fraternal organization" - refer to subsection 11 of North Dakota Century Code section 53-06.1-01.
40. "Gaming employee" is any person employed by a licensed organization or distributor to assist in, conduct, operate, participate in, promote, or manage gaming activity for compensation.
- ~~38.~~ 41. "Gaming equipment" means any device, apparatus, or implement usable in the conduct of games of chance, specifically designed for the purpose, but excluding tables and chairs normally used in the occupancy of a premise, signs, and fill slips and credit slips used in games of chance. The term "equipment" includes, but is not limited to, twenty-one table, poker table, rafflewheel, chip tray, dealing shoe, drop box, chips, table playing surface, bingo machine, flashboard, hard and paper bingo cards, decks of twenty-one and poker cards, coin-operated dispensing device, jar bar, paper-type and electronic punchboards, punchcards punchcard, raffle tickets ticket, rafflewheel tickets ticket, professional sports-pool boards, and deals board, calcutta board, deal of charitable gaming tickets, including club specials special, tip boards board, and seal boards board.
- ~~39.~~ 42. "Gross proceeds" - refer to subsection 12 of North Dakota Century Code section 53-06.1-01.

- ~~40-~~ 43. "Hand" in poker means one game in a series, one deal, the cards held by a player, or the best five cards of a player's holding.
- ~~41-~~ 44. "Hole-card":
- a. In twenty-one is the second card dealt to the dealer. The card is either dealt face downwards or dealt face upwards depending on the method of dealing.
 - b. In poker is a card held by the player which is unseen by the other players.
- ~~42-~~ 45. "Inside information" is any information about the status of a game of chance when that game is in play and that gives does or potentially could give a person an advantage over other persons that do another person who does not have that information (for example, for games of charitable gaming tickets such information includes tip-offs, buyables, or dumpables), regardless if the person does use or does not use the information, when providing that information is prohibited by North Dakota Century Code chapter 53-06.1 or this article. Inside information includes, but is not limited to, approximate or precise information provided through written, verbal, or nonverbal communications that directly or indirectly implies or expresses the number of unsold tickets; the relationship of the game's actual cash on hand to the game's ideal adjusted gross proceeds; and the number of unredeemed major and consolation winning tickets that the organization has not posted as provided by subdivision b of subsection 19 of section 10-04.1-08-03.
- ~~43-~~ 46. "Insurance bet" in twenty-one means a wager by a player that a dealer holds a natural twenty-one when the dealer has an ace showing.
- ~~44-~~ 47. "Last sale feature" is a prize offered on ~~deals~~ a commingled game of charitable gaming tickets, tip ~~boards~~ board, club ~~specials~~ special, and ~~punchboards~~ punchboard to the player who purchases the last charitable gaming ticket or punch of that game.
- ~~45-~~ 48. "Licensed organization" means an organization licensed by the attorney general to conduct games of chance.
- ~~46-~~ 49. "Licensee" - refer to subsection 13 of North Dakota Century Code section 53-06.1-01.
- ~~47-~~ 50. "Licensing authority" - refer to subsection 14 of North Dakota Century Code section 53-06.1-01.
- ~~48-~~ 51. "Local permit" means a permit issued by the local governing body of a city or county to an organization which is eligible

to conduct bingo, raffles, or professional sports pools, or any combination, but which is not required to have a class A or class B license.

~~49.~~ 52. "Manufacturer" - refer to subsection 15 of North Dakota Century Code section 53-06.1-01.

~~50.~~ 53. "Master flare" ~~is used in conjunction with:~~

a. In regard to a series of rafflewheel ticket cards- ~~The master flare,~~ describes the type of rafflewheel tickets in the series, lists the range of rafflewheel ticket card numbers in each series, and has a state gaming stamp affixed to it bearing the card number of the lowest numbered rafflewheel ticket card in the series.

b. In regard to a commingled game of charitable gaming tickets, describes the type of deal commingled in the game, including at least the name of game, price per ticket, winning number, symbol, or set of symbols, number of prizes, and denomination of prizes.

~~51.~~ 54. "Member" - refer to subsection 16 of North Dakota Century Code section 53-06.1-01.

~~52.~~ 55. "Natural twenty-one" is the highest ranking hand in the game of twenty-one consisting of an ace and a ten-count card on the first two cards dealt.

~~53.~~ 56. "Occasion" in poker means either a nontournament or a tournament term during which an organization may conduct the game of poker at the organization's licensed sites, as follows:

a. A nontournament term is a twenty-four-hour period of play completed within a continuous forty-eight-hour period.

b. A tournament term is a consecutive three-calendar-day period of play without a limit on the number of hours of play.

~~54.~~ 57. "Opener" in poker is the player who makes the first bet on any betting round.

~~55.~~ 58. "Other public-spirited organization" - refer to subsection 17 of North Dakota Century Code section 53-06.1-01.

~~56.~~ 59. "Pat hand" in poker means a hand in draw poker which does not need another card drawn to it.

~~57.~~ 60. "Person" - refer to subsection 18 of North Dakota Century Code section 53-06.1-01.

61. "Player" in calcutta means the person who has wagered at an auction and has purchased a competitor.
- ~~58-~~ 62. "Pot" in poker is a location on the poker table. It also is referred to as the total amount anted and bet by players during a game. The pot is awarded to the winning player.
63. "Primary game of chance" is the distinction of whether bingo is the principal game conducted on the gaming site in relation to any other game conducted. The distinction is based on factors such as frequency of conduct, square footage used, and volume of gaming activity.
- ~~59-~~ 64. "Rafflewheel" is a mechanical vertical wheel marked off into equally spaced sections that contain numbers or symbols, and which after being spun, uses a pointer or marker to indicate the winning numbers or symbols. It is used for the selection of the winner of a raffle involving rafflewheel tickets.
- ~~60-~~ 65. "Rafflewheel ticket" is a preprinted detachable ticket on a rafflewheel ticket card that has printed on it a rafflewheel ticket card number and one or more numbers or symbols corresponding to the numbers or symbols on a rafflewheel.
- ~~61-~~ 66. "Rafflewheel ticket card" means a card to which is attached rafflewheel tickets bearing all the numbers or symbols on a rafflewheel. A rafflewheel ticket card must have a stub attached that has preprinted on it a rafflewheel ticket card number and space for the winning number or symbol to be written in. Each rafflewheel ticket card must have a different and consecutive card number within the series of rafflewheel ticket cards.
- ~~62-~~ 67. "Rafflewheel ticket card number" means the game serial number preprinted by the manufacturer on a rafflewheel ticket card and its rafflewheel tickets.
- ~~63-~~ 68. "Raise" in poker means a bet in an amount greater than the immediately preceding bet on that betting round.
- ~~64-~~ "Rake" in poker is two percent of a pot containing a total amount of ten dollars or greater which is taken by the organization for conducting the game.
- ~~65-~~ 69. "Religious organization" - refer to subsection 19 of North Dakota Century Code section 53-06.1-01.
- ~~66-~~ 70. "Round" in poker is the cycle when players make their bet following the deal of a card or cards.
- ~~67-~~ 71. "Shoe" in twenty-one means a card-dealing box, capable of holding at least two hundred eight regular playing cards.

which is constructed of a transparent material except that the face of the shoe may be opaque.

- ~~68-~~ 72. "Showdown" in poker means the revealing of each player's hand by the player after the last bet to determine which player is the winner of the pot.
- ~~69-~~ 73. "Site authorization" means an authorization issued by the local governing body of a city or county to an organization which is eligible to conduct games of chance and which is required to have a class A or B license.
- ~~70-~~ 74. "Stake" in poker means the value of the chips with which a player enters a game.
- ~~71-~~ 75. "Supplies" means any item of a minor nature such as bingo daubers, bingo crayons, and glue sticks that are usable in the play of games of chance. The organization's revenue from the sale of these items to the player must be is classified as nongaming revenue.
- ~~72-~~ "Tipboard" means a board or placard to which is attached tickets, arranged in columns or rows, which tickets contain concealed numbers. When a ticket is purchased and opened, players having certain predesignated numbers can sign the board at the place indicated by the number on the ticket. When the predesignated numbers are all purchased, a seal is removed to reveal a number indicating which of the predesignated numbers is the winning number.
76. "Tournament" in twenty-one and poker means a contest in which two or more persons play twenty-one or poker with one or more buy-ins. The objective, at the conclusion of the twenty-one or poker tournament, is to determine the player who has accumulated the largest amount of winnings.
- ~~73-~~ 77. "Veterans organization" - refer to subsection 20 of North Dakota Century Code section 53-06.1-01.
- ~~74-~~ 78. "Wild card" in poker is a special card, such as a joker, that a player can use to form a hand by making the card any value the player desires.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-17

10-04.1-02-01. Purpose of organization. An organization is ineligible to conduct games of chance if the sole purpose of that organization is to conduct ~~such~~ those games of chance, whether or not the organization is carrying out that purpose for one or more otherwise

eligible organizations. Therefore, every organization desiring to conduct games of chance ~~must~~ shall manifest itself by veterans, charitable, educational, religious, fraternal, civic and service, or other public-spirited programs. Except for an educational organization, a county, city, state, or federal entity is not an eligible organization.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-02, 53-06.1-17

10-04.1-02-02. Civic and service clubs.

1. An organization is a civic and service club only if its primary purpose of being is a civic and service purpose. A "civic and service purpose" is the promotion of the common good and social welfare of the community and public at large (i.e., affecting an indefinite number of people). Purposes which benefit only a portion of the community, which are limited to one or a few substantive activities, or which are otherwise narrow in scope are not civic or service purposes. Private athletic, social, hobby, trade, business, professional, or other similar clubs or associations are generally not civic and service clubs.
2. Before passing a resolution recognizing an organization as a civic and service club, a city or county governing body shall determine the primary purpose of being of the organization, the manner in which this purpose has been carried out in the past, and the intended uses of the net proceeds generated by the contemplated games of chance. The following items must be examined by the governing body in order to make these determinations:
 - a. Statements of receipts and expenditures for at least the two previous years which specifically outline the projects and other activities to which all of the organization's funds have been devoted and which are attested to by the financial officer and the president or other similar officer of the organization.
 - b. A copy of the organization's charter, constitution, bylaws, articles of incorporation, or similar documents which help to establish its primary purpose of being and its date of origin.
 - c. A copy of the minutes of the organization's meetings which includes a resolution which specifically states the intended uses of funds generated by games of chance and which is attested to by the secretary or other similar officer of the organization.

- d. Any other relevant materials submitted by the organization or by any other party.
3. The resolution passed by the city or county governing body recognizing an organization as a civic and service club must include the following findings of the governing body:
 - a. A statement of the primary purpose of being of the organization and the specific items relied upon in concluding that the purpose is a "civic and service purpose" as defined by subsection 1 of this section ~~10-04.1-02-02~~.
 - b. A statement which specifically outlines the manner in which this primary purpose of being has been achieved in the past and how the purpose will be achieved by the granting of the games of chance site authorization or local permit.
 - c. A statement which specifically outlines the intended uses of the net proceeds generated by the contemplated games of chance and the conclusion that all of these uses are eligible uses under subsection 6 7 of North Dakota Century Code section 53-06.1-01, and the rules issued ~~thereunder~~ under this article.
 - d. A Unless the organization is applying for a local permit and the governing body of the city or county has waived or will waive the two-year requirement, a statement of the organization's date of origin and the conclusion that the organization has actively existed in North Dakota for at least the two previous years.
 - e. A statement that the governing body has examined all of the materials which are required to be examined.
 - f. A clause recognizing the organization as a civic and service club.
 4. Organizations recognized by resolution as "civic and service clubs" shall devote the net proceeds of games of chance only to those eligible uses specifically outlined in the resolution.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-17

10-04.1-02-03. Other public-spirited organizations.

1. For the purpose of administering subsection ~~15~~ 17 of North Dakota Century Code section 53-06.1-01, the term "other public-spirited organization" does not include veterans, charitable, educational, religious, fraternal organizations, or civic and service clubs. Therefore, "other public-spirited organization" does not include an organization which would satisfy any of the definitions of these terms in North Dakota Century Code section 53-06.1-01, except for its failure to meet a requirement of two years of existence or functioning ~~or its failure to obtain the resolution required under subsection 4 of North Dakota Century Code section 53-06.1-01.~~ Private athletic, social, hobby, trade, business, professional, or other similar clubs or associations are generally not "other public-spirited organizations".
2. For the purpose of administering subsection ~~15~~ 17 of North Dakota Century Code section 53-06.1-01, the term "other public-spirited organization" means an organization whose primary purpose of being or whose primary intended uses of gaming net proceeds is consistent with subdivision c, e, f, g, h, or i of subsection ~~6~~ 7 of North Dakota Century Code section 53-06.1-01.
3. An organization whose primary purpose of being is consistent with subdivision h or i of subsection ~~6~~ 7 of North Dakota Century Code section 53-06.1-01 must have one or more individuals affected by a specific event which has transpired ~~as of the time of~~ prior to the application for a site authorization or local permit.
4. In order to allow a city or county to protect and promote the public interest, an organization, except one whose primary purpose of being is consistent with subdivision h or i of subsection ~~6~~ 7 of North Dakota Century Code section 53-06.1-01, must have actively been in existence in North Dakota, and maintained its same qualifying primary purpose of being, for at least the two previous years before it can be granted a site authorization or local permit as an other public-spirited organization. However, this two-year requirement for a local permit may be waived by the governing body of the city or county if the organization otherwise qualifies for the local permit.
5. Before passing a resolution recognizing an organization as a public-spirited organization which is eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1, a city or county governing body shall determine the primary purpose of being of the organization, the manner in which its purpose has been carried out, and the intended uses of the net proceeds generated by games of chance. The following items must be examined by the governing body in order to make these determinations:

- a. Statements of receipts and expenditures for at least the two previous years, except for organizations whose primary purpose of being is consistent with subdivision h or i of subsection 6 of North Dakota Century Code section 53-06.1-01, which specifically outline the projects and other activities to which all of the organization's funds have been devoted and which are attested to by the financial officer and president or other similar officer of the organization.
 - b. A copy of the organization's charter, constitution, bylaws, articles of incorporation, or similar documents which help to establish its primary purpose of being and its date of origin.
 - c. A copy of the minutes of the organization's meetings which ~~includes~~ include a resolution which specifically states the intended uses of funds generated by games of chance and which is attested to by the secretary or other similar officer of the organization.
 - d. Any other relevant materials submitted by the organization or by any other party.
6. The resolution, passed by the city or county governing body, recognizing an organization as a public-spirited organization which is eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1 must include the following findings of the governing body:
- a. A statement that the organization is not a veterans, charitable, educational, religious, or fraternal organization, or a civic and service club.
 - b. A statement of the primary purpose of being of the organization.
 - c. A statement specifying the specific provision of subdivision c, e, f, g, h, or i of subsection ~~6~~ 7 of North Dakota Century Code section 53-06.1-01, with which the primary purpose of being of the organization is consistent.
 - d. A statement which specifically outlines the manner in which this primary purpose of being has been achieved and how the purpose will be achieved by the granting of the games of chance site authorization or local permit.
 - e. A statement which specifically outlines the intended uses of the net proceeds generated by the contemplated games of chance and the conclusion that all of these uses are eligible ~~uses~~ under subdivision c, e, f, g, h, or i of subsection ~~6~~ 7 of North Dakota Century Code section

53-06.1-01, and the rules issued ~~hereunder~~ under this article.

- f. A statement that the governing body has examined all of the materials which are required to be examined.
 - g. A clause recognizing the organization as public-spirited and eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1.
7. If the resolution states that the primary purpose of being of the organization is within subdivision g of subsection ~~6~~ 7 of North Dakota Century Code section 53-06.1-01 (lessening the burden of government), it must also state either that the city or county (as applicable) operated and funded the project the organization intends to benefit or that it is a project the city or county wants to undertake but that it cannot do so without receiving financial help from the organization. Copies of city or county records sufficient to establish either of these statements will be sent to the attorney general by the organization.
 8. Organizations recognized by resolution as public-spirited organizations eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1 shall devote the net proceeds of games of chance only to those eligible uses specifically outlined in the resolution.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-02.1, 53-06.1-17

10-04.1-03-01. Licenses.

1. Every organization eligible for a license must first receive an a site authorization for a gaming site ~~or sites~~ within a city from the city governing body or for a gaming site ~~or sites~~ within a county, ~~exclusive of~~ outside the city limits, from the county governing body. The eligible organization shall then apply to the attorney general for a separate license for each city or county, ~~or both~~, for which it holds an a site authorization for a gaming site ~~or sites~~.
- 1.1. Every eligible organization desiring to conduct the game of poker must first receive a class E license from the attorney general. The application must be on a form prescribed by the attorney general and must contain such necessary and reasonable information as the attorney general requires.
- 1.2. An eligible organization that qualifies for a class A license may not be issued a class B license.

2. A class A organization wishing to obtain a special permit from the attorney general for an alternate location, pursuant to subdivision a of subsection 3 4 of North Dakota Century Code section 53-06.1-03, shall first obtain a site authorization from the governing body of the location of the alternate site. No fee may be charged for this authorization by the governing body. The class A organization shall then apply to the attorney general for a special permit.
3. All class A and class B applications are subject to the approval of the attorney general. At the discretion of the attorney general, temporary ~~permits~~ licenses, revocable on demand, may be issued pending review or investigation, or both, of the application.
4. The information provided on the license application by the organization must meet all the requirements of the administrative rules and law, otherwise the license application may be denied.
5. Class A and class B licenses are effective for a period of one year beginning July first and ending June thirtieth.
6. There may be no proration of the fees set out in subsection 1 of North Dakota Century Code section 53-06.1-03, for any organization commencing a game of chance after July first.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-06, 53-06.1-11, 53-06.1-15.1, 53-06.1-17

10-04.1-03-02. Site authorizations.

1. ~~Site authorizations are~~ A site authorization is issued at the discretion of the city or county governing body. ~~Site authorizations~~ A site authorization may be issued for a gaming site located on public or private property. A site authorization may have certain restrictions applied to ~~them~~ it by the governing body. ~~Such~~ The restrictions may include types of games of chance, days of the week, and designation of an area at a site where games of chance will be conducted. A governing body may establish a site authorization fee not to exceed one hundred dollars for each site authorization or amended site authorization. An applicant has no absolute right to receive a site authorization from the governing body. The governing body, therefore, may reject or may not approve reapplications for a site authorization or may restrict a site authorization in order to limit the gaming activity within its jurisdiction. However, ~~nothing in this rule may be construed as allowing~~ the governing body to may not restrict the

organization's disbursement of gaming adjusted gross proceeds or net proceeds.

2. No applicant may be denied approval of a site authorization on the grounds of the race, color, religion, sex, or national origin of the membership of the applicant.
3. The local governing body may enact ordinances to allow a revocation or suspension of an issued site authorization.
4. A separate site authorization is required for each site at which games of chance have been authorized.
5. It is recommended that the local governing body act on the site authorizations by June first for each licensing period July first through June thirtieth. An organization may set up and use more twenty-one tables at a gaming site than a site authorization allows, if a specific occasion exists which does not exceed seven days and if written approval is granted by the local governing body, and if the rent amount does not increase.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-05.1, 53-06.1-17

10-04.1-03-02.1. Local permits.

1. A local permit is issued at the discretion of the city or county governing body. A local permit may be issued for a gaming site located on public or private property. A local permit may have certain restrictions applied to it by the governing body. The restrictions may include types of games of chance, days of the week, and designation of an area at a site where games of chance will be conducted. A governing body may establish a local permit fee not to exceed twenty-five dollars for each local permit or amended local permit. An applicant has no absolute right to receive a local permit from a governing body. The governing body, therefore, may reject or may not approve reapplications for a local permit or may restrict a local permit in order to limit the gaming activity within its jurisdiction.
2. No applicant may be denied approval of a local permit on the grounds of the race, color, religion, sex, or national origin of the membership of the applicant.
3. The local governing body may enact ordinances to allow a revocation or suspension of an issued local permit.

4. A separate local permit is required for each site at which games of chance have been authorized.
5. No organization that has been issued a class A or class B license by the attorney general may simultaneously be issued a local permit.
6. When a local governing body issues a local permit to an eligible organization to conduct bingo, raffles, or professional sports pools, the local governing body shall send a copy of the local permit to the attorney general within fourteen days from the date on which the local permit was issued to the organization.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-03-03. Closely connected organizations prohibited.

1. Organizations closely connected to an organization licensed by the attorney general may not be licensed nor receive a local permit for the conduct of bingo, raffles, or professional sports pools except as specifically authorized by the attorney general. ~~Such~~ The authorization must be based on the conditions set forth by the attorney general. However, college fraternities and sororities that may receive a local permit under North Dakota Century Code section 53-06.1-05 are exempt from this rule.
2. An otherwise eligible organization is determined to be connected to another eligible organization if any one or more of the following conditions are present:
 - a. Membership in one organization automatically qualifies an individual as a member of another organization.
 - b. Membership in one organization is dependent upon membership in another organization, including social memberships.
 - c. The existence of an organization is dependent upon the existence of another organization.
3. Any affiliation of two or more organizations, contractual or otherwise, the substance of which is the circumvention of North Dakota Century Code chapter 53-06.1 regarding the required use of net proceeds or payment of the tax, or both, is prohibited.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-03, 53-06.1-17

10-04.1-03-04. License application information. The application must be on a form prescribed by the attorney general and must contain such necessary and reasonable information as the attorney general requires. The application must include at least the information required by this section on or attached to the application except that the information required by subsections 6 and 7 only need to be provided with the initial application.

1. Acknowledgment of local law enforcement. Every eligible organization shall notify the city chief of police for the intended site within city limits, or county sheriff, as appropriate, of the intended site or sites for the intended site outside city limits, at which games of chance are to be conducted and obtain local law enforcement acknowledgment. Every eligible organization shall also consent in advance that local law enforcement officers or the attorney general ~~and the attorney general's agents~~ may, while on duty and at any time games of chance are being conducted, enter upon the site to observe the playing of games of chance and to enforce the law for any unauthorized game or practice. The acknowledgment by the chief of police or sheriff and the consent by the eligible organization must be completed on forms provided by the attorney general.
2. Rental agreements. Copies of all rental agreements between the organization and the legal owner or person who has the express responsibility and authority to execute ~~such~~ those rental agreements for the site upon which the gaming activity will be conducted.
3. Sources of funds. The general sources and approximate amount of funds available to the organization to reimburse the general gaming bank account for any excess gaming expenses.
4. Acknowledgment of governing board. The chairman may sign the governing board form if the organization has a resolution signed by a majority of the members of the governing board providing the organization's board's chairman with signatory authority. Otherwise, the governing board form must be signed by each member of the governing board. Each The resolution or each member shall acknowledge that the member understands the member's legal responsibility for the fair and lawful operation of all licensed gaming activities that the organization conducts.
5. Authorization to inspect bank records. An "authorization to inspect bank records" of the general gaming bank account, all other accounts controlled by the organization, and, for ~~appropriate~~ class B organizations, the charitable gaming trust

fund bank account, must be completed on forms provided by the attorney general. The organization shall grant the attorney general a consent in accordance with North Dakota Century Code sections 6-08.1-03, 6-08.1-04, and 6-08.1-05 to enable a financial institution to disclose customer information to the attorney general.

6. Articles of incorporation and bylaws. Copy of corporate articles of incorporation and bylaws or, if not a corporation, a copy of any bylaws and other documents which set out the organizational structure and purposes of the organization.
7. Internal revenue service tax exemption letter. For organizations that use the gaming net proceeds for uses benefiting their own organization as provided by subdivision a of subsection ~~6~~ 7 of North Dakota Century Code section 53-06.1-01, copy of an internal revenue service letter that evidences exemption from federal taxation under section ~~501(c)(3)~~ 501(c) of the Internal Revenue Code. If a tax exemption letter has not been obtained, attach an explanation.
- ~~8. Secretary of state solicitation license. If applicable, copy of a current solicitation license issued by the North Dakota secretary of state that evidences registration to solicit contributions under North Dakota Century Code chapter 50-22.~~

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-06, 53-06.1-17

10-04.1-03-05. Required orientation for licensed organizations. An organization first licensed by the attorney general to conduct games of chance on November 1, 1986, and thereafter, shall within the first quarter of the commencement of conducting games of chance request orientation from the attorney general. Any organization licensed by the attorney general to conduct games of chance shall, when requested by the attorney general, participate in orientation. The orientation must take place at a location chosen by the attorney general and must include games of chance administrative rules and law, recordkeeping requirements, internal control, and preparation of the gaming tax return. ~~The organization shall provide the attorney general with a copy of its written internal accounting and administrative control system as provided by section 10-04.1-05-02.~~ At a minimum, the organization's governing board or the person responsible for the recordkeeping, or both, shall participate in the orientation.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-03-06. Required orientation for new bookkeepers. Unless a new bookkeeper has previously received training from the attorney general, an organization that employs, for compensation or not, a new bookkeeper who is principally responsible for complying with the recordkeeping requirements of North Dakota Century Code chapter 53-06.1 and of these rules, shall within ninety days of the date of the bookkeeper's employment request orientation from the attorney general. The bookkeeper's orientation must take place at a location chosen by the attorney general and must include games of chance administrative rules and law, recordkeeping requirements, internal control, and preparation of the gaming tax return. At a minimum, the organization's new bookkeeper shall participate in the orientation. A bookkeeper is a person who is responsible for recording accounting and management data of a gaming operation in a prescribed manner. Responsibilities may include compliance with the recordkeeping systems prescribed by this article, preparation of reports based on the recorded data, participation in the count of the twenty-one drop box cash, reconciliation of bank accounts, and verification that the organization's internal controls are complied with.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-03-07. ~~Employee information.~~

- ~~1. In order to ensure fair and honest games of chance and to preserve the integrity of the administration of the games of chance law, every class A and class B licenseholder shall complete and submit an employee information report to the attorney general within fourteen days after receipt of a class A or class B license.~~
- ~~2. The employee information report shall contain such necessary and reasonable information as the attorney general may require.~~
- ~~3. Additions or deletions, or both, to this report must be furnished to the attorney general each quarter period.~~

Organization prohibited from receiving a local permit. No organization prohibited by the attorney general from being issued a class A or class B license due to the organization's failure to reimburse the excess of expenses over the percentage limitation may be issued a local permit. The attorney general may prohibit an organization from receiving a local permit if the attorney general suspended or revoked the organization's license, the organization was convicted of violating any provision of this article or North Dakota Century Code chapter 12.1-28 or 53-06.1, or the organization has not disbursed its net proceeds carryover or trust fund carryover amount.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-03-08. Reporting changes in information. When information filed with the attorney general becomes inaccurate in a material way, or material additions or deletions are necessary to reflect changes in circumstances of the organization, the organization shall ~~submit~~ provide the attorney general, in writing full, details of such the change or and correct any inaccuracy, or both, together along with copies of any new required documents, with the attorney general within fourteen days following the change.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-03-09. Bingo - Local permit by local governing body only. ~~No~~ An organization may receive one or more than two local permits by from a local governing bodies body during the fiscal year beginning July first and ending June thirtieth to conduct bingo, raffles, professional sports pools, or any combination thereof, as authorized by sections ~~10-04.1-03-09, 10-04.1-03-10, and 10-04.1-03-11, and this section. The provisions of chapter 10-04.1-06 apply~~ organization shall at least apply sections 10-04.1-06-01, 10-04.1-06-02, ~~10-04.1-06-03, 10-04.1-06-04, and 10-04.1-06-05~~ to the conduct and play of bingo unless otherwise exempted any provision of these sections is superseded by these rules this section.

1. In order to protect and promote the public interest, a local permit issued by a city or county governing body for the purpose of conducting bingo shall apply only when all of the following criteria are met:
 - a. The organization is an eligible organization.
 - b. The organization will conduct only bingo, raffles, professional sports pools, or any combination thereof, throughout the entire fiscal year beginning July first and ending June thirtieth.
 - c. The frequency of the bingo session does not exceed once per week, unless the local permit is issued for a single specific session which does not last over two weeks.
 - d. The current retail price of a single bingo merchandise prize or cash prize for each a game of each during a bingo session does not exceed one thousand dollars, and the total current retail price of the aggregate of the bingo merchandise prizes and cash prizes for the local permit entire fiscal year does not exceed two six thousand

dollars. A donated merchandise prize is valued at the prize's current retail price for computing the prize limitations of a local permit.

- e. The bingo session is conducted upon a site which either does not have a retail alcoholic beverage licensee thereon, or does have a retail alcoholic beverage licensee thereon but the licensee is not dispensing alcoholic beverages during the conduct of the bingo session or the conduct of the bingo session is in an area of the site which is physically separated from the area where retail alcoholic beverages are being dispensed or consumed.
2. An applicant failing to comply with any of the items in subdivisions b through e of subsection 1 may not conduct bingo without first obtaining a class A or class B license unless exempted by the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-06, 53-06.1-07, 53-06.1-17

10-04.1-03-10. Raffles - Local permit by local governing body only. ~~No~~ An organization may receive one or more than two local permits by from a local governing bodies body during the fiscal year beginning July first and ending June thirtieth to conduct bingo, raffles, professional sports pools, or any combination thereof, as authorized by sections 10-04.1-03-09, ~~10-04.1-03-10,~~ and 10-04.1-03-11, and this section. The provisions of chapter 10-04.1-07 apply organization shall at least apply sections 10-04.1-07-01, 10-04.1-07-02, 10-04.1-07-02.1, 10-04.1-07-03, 10-04.1-07-04, 10-04.1-07-05, 10-04.1-07-05.1, and 10-04.1-07-06 to the conduct and play of raffles, including a calendar raffle and a series of rafflewheel ticket cards, unless otherwise exempted any provision of these sections is superseded by these rules this section.

1. In order to protect and promote the public interest, a local permit issued by a city or county governing body for the purpose of conducting raffles shall apply only when all of the following criteria are met:
 - a. The organization is an eligible organization.
 - b. The organization will conduct only raffles, bingo, or professional sports pools, or any combination thereof, throughout the entire fiscal year beginning July first and ending June thirtieth.
 - c. The frequency of the raffle drawing occasion does not exceed once per week, unless the local permit is issued

for a single specific occasion which does not last over two weeks.

- d. The current retail price of a single raffle merchandise prize or cash prize for a raffle drawing occasion does not exceed one thousand dollars and the total current retail price of the aggregate of the merchandise prizes and cash prizes for a raffle drawing occasion, including a calendar raffle, for the ~~local permit~~ entire fiscal year does not exceed ~~two six~~ three thousand dollars. A donated merchandise prize is valued at the prize's current retail price for computing the prize limitations of a local permit. Cash prizes for a raffle drawing occasion may not exceed ~~five hundred dollars~~ three thousand dollars in the aggregate during one day. However, if the organization is a nonprofit organization that conducts a city or county festival or celebration, the current retail price of a single raffle merchandise prize or cash prize for a raffle drawing occasion may not exceed one thousand dollars, and the aggregate of the merchandise prizes and cash prizes for the entire fiscal year may not exceed two thousand dollars.
 - e. The raffle drawing occasion is conducted upon a site which either does not have a retail alcoholic beverage licensee thereon, or does have a retail alcoholic beverage licensee thereon but the licensee is not dispensing alcoholic beverages during the conduct of the raffle drawing occasion, or the raffle drawing occasion is in an area of the site which is physically separated from the area where retail alcoholic beverages are being dispensed or consumed.
2. An applicant failing to comply with any of the items in subdivisions b through e of subsection 1 may not conduct raffles without first obtaining a class A or class B license unless exempted by the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-06, 53-06.1-07, 53-06.1-10.1, 53-06.1-17

10-04.1-03-11. Professional sports pools - Local permit by local governing body only. No An organization may receive one or more than two local permits by from a local governing bodies body during the fiscal year beginning July first and ending June thirtieth to conduct bingo, raffles, professional sports pools, or any combination thereof, as authorized by sections 10-04.1-03-09, 10-04.1-03-10, and ~~10-04.1-03-11~~ this section. The provisions of chapter ~~10-04.1-09~~ apply organization shall at least apply section 10-04.1-09-01 to the conduct

and play of professional sports pools unless ~~otherwise exempted~~ any provision of these sections is superseded by these rules this section.

1. In order to protect and promote the public interest, a local permit issued by a city or county governing body for the purpose of conducting professional sports pools shall apply only when all of the following criteria are met:
 - a. The organization is an eligible organization.
 - b. The organization will conduct only professional sports pools, bingo, or raffles, or any combination thereof, throughout the entire fiscal year beginning July first and ending June thirtieth.
 - c. The maximum wager on any professional sports pool is five dollars per square.
 - d. The total wagers do not exceed five hundred dollars for each professional sports pool.
 - e. The amounts paid to professional sports-pool participants in prizes may not exceed ninety percent of the gross proceeds.
 - f. The sports-pool board is conducted upon a site which either does not have a retail alcoholic beverage licensee thereon, or does have a retail alcoholic beverage licensee thereon but the licensee is not dispensing alcoholic beverages during the conduct of the sports-pool board or the conduct of the sports-pool board is in an area of the site which is physically separated from the area where retail alcoholic beverages are being dispensed or consumed.
2. An applicant failing to comply with the items in subdivisions b and f of subsection 1 may not conduct professional sports pools without first obtaining a class A or class B license unless exempted by the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-06, 53-06.1-09, 53-06.1-17

10-04.1-04-01. Only those games as defined allowed. Notwithstanding descriptions of various games of chance, only those defined in this article ~~shall~~ may be permitted to be conducted by eligible organizations.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-17

10-04.1-04-02. Inspection of rules. ~~Every eligible~~ The organization shall have a current copy of the North Dakota games of chance law and rules readily available for inspection by any ~~individual~~ person at each gaming site authorized to conduct games of chance.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-17

10-04.1-04-03. Governing board.

1. The organization's governing board is responsible for all phases of gaming activity conducted by the eligible organization including its members, auxiliary components, employees, and agents. Gaming activity includes the use of the net proceeds.
2. The minutes or other proper records of the organization must annually reflect the name and, address, and title of each member of this governing board. The governing board must be comprised of only bona fide members of the organization. A majority of the members of the governing board must be comprised of North Dakota residents.
3. ~~It is recommended that members~~ Members of this governing board ~~not may~~ conduct, or assist in the conduct of, their organization's games of chance. However, members of this governing board are prohibited from conducting, or assisting in the conduct, of their organization's games of chance if it is determined by the attorney general that the ~~organization's~~ permissive policy has resulted in questionable activity.
4. ~~In order to preserve the integrity of the administration of the games of chance law, the attorney general may determine that the provisions of North Dakota Century Code section 53-06.1-16 are applicable to this governing board or any member thereof.~~
- 5- Each organization shall ~~have~~ make available to its governing board ~~make available in writing and~~ to its membership in writing, at least once a quarter, the organization's total adjusted gross proceeds; cash long or short; net proceeds; excess expenses, if any; reimbursement of excess expenses, if applicable; and eligible use contributions. ~~Such~~ That information and the manner in which the organization made the information available to its governing board and membership must ~~also~~ be included in the minutes or other proper records of each organization.

~~6-~~ 5. ~~It is recommended that the~~ The governing board may establish a games of chance committee. This committee ~~should~~ must be comprised of only bona fide members of the organization and serve as an advisory committee to the governing board. The governing board may assign the governing board's supervisory duties to a games of chance committee; however, the governing board is still ultimately responsible. The particular provisions of ~~the administrative rules, law~~ this article, North Dakota Century Code chapter 53-06.1, or formal directives issued by the attorney general as applied to the governing board also apply to the games of chance committee.

6. No North Dakota law enforcement official may be a member of an organization's games of chance committee.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-17

10-04.1-04-04. Specific location. For the purpose of subdivision d of subsection ~~3~~ 4 of North Dakota Century Code section 53-06.1-03, "specific location" does not include the site of a fair, carnival, exposition, or similar occasion.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-17

10-04.1-04-05. Organizations to purchase only from licensed distributors. ~~An~~ Except for the application of subsection 1 of section 10-04.1-04-06, an organization licensed by the attorney general or which has been issued a local permit by the local governing body shall purchase or otherwise procure gaming equipment and supplies only from North Dakota licensed distributors. However, the purchase of a raffle tickets, jar bar, or poker table is exempt from this requirement.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-06. Equipment acquisitions and use.

1. ~~Eligible~~ Except when authorized in writing by the attorney general, organizations are prohibited from renting, lending, exchanging, or otherwise providing gaming equipment with any licensed organization, organization which has been issued a local permit, or person (person includes any entity - refer to North Dakota Century Code sections 1-01-28 and 53-06.1-01).

2. An eligible organization anticipating the printing, manufacture, or construction of any gaming equipment, excluding jar bars and poker tables, for games of chance shall first notify the attorney general of its intention and ~~shall~~ must have the finished product approved by the attorney general before being placed in service.
3. No organization may use or permit gaming equipment to be used for nongaming purposes unless the organization first receives written authorization from the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-14, 53-06.1-17

10-04.1-04-07. Promotion of games of chance. ~~Free~~ No organization may give free games, alcoholic drinks, twenty-one chips, or poker chips, ~~given~~ directly or indirectly, to players any person to participate in games of chance, ~~are prohibited~~.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-07.1. Door prize. No organization may award a door prize as a promotion for games of chance unless the organization meets all of the following requirements:

1. No payment or purchase of anything is required of a person to participate.
2. No person is forced to participate and participation is open to any person.
3. There must be full disclosure of the door prize to the persons at the gaming site.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-08. Lessor of gaming site - Restrictions.

1. Any advertising done, by the lessor or any other person, related to games of chance at a site must contain a statement identifying the organization licensed to conduct games of chance at that site. This requirement includes, for example, napkins, advertising signs, and billboards.

2. The lessor, and lessor's spouse, or common household member may not directly or indirectly participate in the play of games of chance at the site leased. Also, the lessor's management, management's spouse, officers, or any employee or agent of the lessor who is in a position, individually or collectively, to approve or deny the lease, may not directly or indirectly participate in the play of games of chance at the site leased. If the site is a public building, this prohibition applies to the building manager and staff and all officials in a position, individually or collectively, to approve or deny the lease. It is recommended that all employees of the lessor not be allowed to play games of chance at the site leased.
3. In no instance may the No lessor, lessor's spouse, common household member of the lessor, management, management's spouse, officers, or any on-call, temporary, or permanent employee or agent may, directly or indirectly, participate in the selling, distributing, conducting, or assisting in the conduct of games of chance at the site leased.
4. No game of chance may be set up or otherwise operated in conjunction with the conduct of the lessor's business operations. However, an organization may purchase a merchandise prize from the lessor at a cost not to exceed the prize's current retail price.
5. No officer or board member of a licensed organization may have any financial interest in or be a lessor, lessor's spouse, management, management's spouse, or officer of any site leased by that organization.
6. No lessor may have a direct or indirect financial interest in the organization or make loans of money to the organization licensed at the gaming site.
7. No lessor may allow or require any gaming employee or volunteer to directly or indirectly assist, for or without compensation, in the operation of the lessor's business. For example, no gaming employee or volunteer may take orders from customers or serve drinks to customers.
8. A lessor may only station an automated teller machine or any other electronic device that provides a person with a cash advance or cash withdrawal in an area on the lessor's premises where games of chance are not conducted.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-17

10-04.1-04-09. Lessor of gaming site - Suspension of licensed games of chance at a site.

1. The attorney general may not license games of chance at a site for a period of ninety days if the lessor of the gaming site terminates a rental agreement with an organization without good cause.
2. No lessor may charge an organization and no organization may pay more rent than allowed by section 10-04.1-04-10 for the maximum number of twenty-one tables set up and necessary for the playing of the game twenty-one at that site. However, an organization may place more tables at a gaming site than the organization or attorney general determines is necessary if the organization is not charged any rent by the lessor for the extra tables (see subsection 5 of section 10-04.1-03-02).

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-09.1. Special restriction on lessor. The attorney general may prohibit a lessor from having games of chance conducted at the lessor's site if the lessor:

1. Violates any provision of North Dakota Century Code chapter 12.1-28 or 53-06.1, this article, or any other law or administrative rule of this state that questions the lessor's good character, honesty, and integrity.
2. Has prior activities, criminal record, reputation, habits, and associations that pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities of gaming.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-09.2. Special restriction on gaming employee or volunteer. The attorney general may prohibit a person from conducting games of chance in North Dakota as a gaming employee or volunteer if the person:

1. Violates any provision of North Dakota Century Code chapter 12.1-28 or 53-06.1, this article, or any other law or administrative rule of this state that questions the person's good character, honesty, and integrity.

2. Has prior activities, criminal record, reputation, habits, and associations that pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or management and control of the gaming operation, including financial matters.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-17

10-04.1-04-09.3. Special restriction on player.

1. The attorney general may prohibit a person from playing games of chance in North Dakota if the person:
 - a. Violates any provision of North Dakota Century Code chapter 12.1-28 or 53-06.1, this article, or any other law or administrative rule of this state that questions the person's good character, honesty, and integrity.
 - b. Has prior activities, criminal record, reputation, habits, and associations that pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the play of gaming.
2. An organization may prohibit a person from playing games of chance at the organization's gaming site if the organization believes that allowing that person to play may pose a threat to the public interest of this state or to the effective regulation and control of gaming or may create or enhance unsuitable, unfair, or illegal practices, methods, or activities in the play of gaming.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-17

10-04.1-04-10. Rental agreements.

1. Every An eligible organization conducting games of chance at a site that is not owned by that organization ~~shall~~ must have in writing the conditions under which it is permitted the use and occupancy of that site. ~~Such~~ The agreement must be attested to by both the lessor and the organization.

2. At a minimum, every ~~such~~ agreement entered into pursuant to this section must contain, by affirmative or negative statement, the following information:

a. Name of lessor if either of the following two conditions exist:

(1) If the lessor is the legal owner of the site and the site has not been leased to a lessee.

(2) If the site has been leased to a lessee and the lessee does not have the express responsibility and authority to execute rental agreements for the site.

Otherwise, the name of the lessee of the site if the lessee has the express responsibility and authority to execute ~~such~~ rental agreements for the site. If the organization is to be a sublessee, then the lessee name must also be included.

b. Name of the eligible organization.

c. Term of the agreement which must be either on a fiscal year basis from July first to June thirtieth or, if the organization is licensed for a period shorter than a fiscal year, on the shorter period. The agreement may be for one or more years. However, if the provisions of the agreement become inconsistent with North Dakota Century Code chapter 53-06.1 and any amendments thereto, or any administrative rules adopted or formal directives issued by the attorney general, the term of the agreement ~~shall~~ must end on the date of the inconsistency.

d. Monetary consideration, if any.

e. Brief description of the general area being leased within the facility.

f. The inclusion of the following ~~statement~~ statements with appropriate selections made for class B licensee applicants:

(1) "The lessor does hereby agree that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, officers, and any on-call, temporary, or permanent employee or agent of the lessor who is in a position, ~~individually or collectively,~~ to approve or deny the lease shall not, directly or indirectly, participate in the selling, distributing, conducting, or assisting, or playing in the conduct of games of chance at the site ~~herein~~ leased."

(2) "The lessor does hereby agree that the (lessor), (lessor's) spouse, and (lessor's) common household member may not, directly or indirectly, participate in the play of games of chance at the site leased. Also, the (lessor's) (management), (management's) spouse, officers, or any employee or agent of the lessor who is in a position, individually or collectively, to approve or deny the lease may not, directly or indirectly, participate in the play of games of chance at the site leased."

- g. A statement that the game of bingo is or is not the primary game of chance conducted on the site.
 - h. A statement that the game of twenty-one is or is not conducted on the site. The number of twenty-one tables, if any, upon which the monthly rent is based.
 - i. A statement that the game of charitable gaming tickets is or is not conducted on the site.
3. Payment of rent pursuant to the agreement must be for a fixed dollar rate per month for the duration of the agreement, other agreed upon duration, or for a one-time event. However, if bingo is the primary game of chance conducted on the site and if the lessor pays for variable and seasonal expenses, the organization's fixed dollar rate per month covers must cover variable and seasonal expenses, such as snow removal, air-conditioning, and heating, the lessor and organization may make a rate adjustment for the last month of the term of the agreement. Otherwise, the organization may pay the variable and seasonal expenses to the vendor.
- a. Graduated rate arrangements are prohibited.
 - b. Other remuneration, in lieu of money, such as capital improvements, is prohibited.
 - c. Percentage rates are prohibited.
 - d. If the game of bingo is the primary game of chance conducted on the site, there is no limit on the monthly rent except that the amount be reasonable. Factors to consider in determining reasonable rent are time usage, floor space, local prevailing rates, availability of space, and available services.
 - e. If the game of bingo is not the primary game of chance conducted on the site, the following applies:
 - (1) If the game of twenty-one is conducted, for purposes of enforcing the maximum monthly rent of one hundred fifty dollars for each table on which the game of

twenty-one is played, the phrase "the number of tables on which the game of twenty-one is played" (see North Dakota Century Code section 53-06.1-03.2) means the maximum number of tables set up and necessary for the playing of the game of twenty-one at that site.

- (2) If the game of charitable gaming tickets is conducted, the maximum monthly rent may not exceed:
 - (a) If the game of twenty-one is conducted, in addition to the rent allowable for the game of twenty-one, fifty dollars.
 - (b) If the game of twenty-one is not conducted, one hundred fifty dollars.
- (3) If the games of twenty-one and charitable gaming tickets are conducted by a licensed organizations organization at a special occasions occasion for five days or less per during a month and the temporary site is a public or private building, the maximum rent the lessor can charge is twenty-five dollars per twenty-one table and ten dollars for the charitable gaming ticket activity, per special occasion. If only the game of charitable gaming tickets is conducted under such those circumstances, the maximum rent the lessor can charge is twenty-five dollars for the charitable gaming ticket activity, per special occasion.
- (4) If the game of poker is conducted in conjunction with the game of bingo, twenty-one or charitable gaming tickets, or any combination, no additional rent is allowed. Otherwise, the rent amount for a poker occasion must be reasonable.

f. Except as provided by subdivision d of subsection 2 of section ~~10-04.1-05-07~~, the No organization may pay no any additional amount or rent from any source to the lessor of the site for any other purposes, such as office space, storage space, snow removal, janitorial service, equipment, and capital improvements, including signs, lighting, decorating, or any other item normally classified as a fixed asset, associated, directly or indirectly, with games of chance on the site. No organization may pay for any capital improvements of a leased gaming site.

g. To other than a lessor of the organization's gaming site, the organization may pay rent for office and storage space, the use of which is directly attributable to the

ancillary functions necessary for the conduct of games of chance.

4. If the game of bingo is no longer the primary game of chance conducted on the site, the number of twenty-one tables necessary changes, or the game of charitable gaming tickets is discontinued so as to necessitate a change in the maximum rent which may be charged or any other change is agreed to or required, the appropriate change must first be made in the ~~lease~~ rental agreement. A copy of the amended ~~lease~~ rental agreement or any renegotiated agreements must be furnished to the attorney general on or before fourteen days prior to the effective date of the new agreement.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-03.1, 53-06.1-03.2, 53-06.1-03.3, 53-06.1-06, 53-06.1-17

10-04.1-04-11. Person in charge and reporting of violations.

1. Every A licensed organization shall designate an individual at each gaming site location as the person in charge. The governing board specified in section 10-04.1-04-03 is responsible for being aware of the conduct of the games of chance at that site and the adherence to compliance with the law and regulations rules by the gaming employees, volunteers, lessor, members, and participants players.
2. Violation Every licensed organization, distributor, gaming employee, or volunteer shall report any material violation of the law and regulations must be made known rules, and any burglary, vandalism, or attempted tampering of gaming equipment immediately by the person in charge to the attorney general or a local enforcement agency if circumstances dictate.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-12. Restriction of site or gaming manager. A person may not act in the capacity of be a site or gaming manager for more than one licensed organization simultaneously. A site or gaming manager is a person who is responsible for managing the daily or overall gaming operation of the organization. Responsibilities may include personnel recruitment and termination, site selection, management, marketing, employee training, administrative and accounting control, budgeting, public relations, supervision, and compliance with the administrative

rules and law. This rule does not apply to a site or gaming manager of an organization whose total actual gross proceeds for the previous fiscal ~~year's four quarters~~ year, for which gaming tax returns were filed, ~~averaged twenty five~~ was one hundred thousand dollars or less per quarter year.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-13. Age limitation. ~~Individuals~~ A person under the age of twenty-one may not conduct, assist, or play any games of chance except for ~~the games of~~ bingo and raffles. No person under the age of sixteen may conduct or assist in the conduct of bingo.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-07.1, 53-06.1-17

10-04.1-04-14. House rules. No house rule may conflict with ~~state law or this article~~ North Dakota Century Code chapter 53-06.1 or this article. All house rules must be posted in a conspicuous location so that any player of that game to which the rules apply can readily read ~~such~~ those rules.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-15. Display of licenses. All licenses and site authorizations granted by a local governing body or the attorney general must be prominently displayed at all times upon the licensed site in ~~such a position as~~ that they may be observed by persons participating in gaming activities on the site.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-16. List of employees to be available on the site. The organization conducting games of chance shall prepare and have available on the site or sites a current list of all employees participating in the management or operation of the games of chance. ~~Such~~ The list must contain the name, ~~complete~~ street address, city, state, zip code, and telephone number. The list must be made available to the attorney general and law enforcement officials upon request.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-19. Credit play prohibited.

1. All playing of games of chance must be on a cash basis. Cash includes checks. No organization may accept credit cards from any person for issuing a cash advance or playing games of chance. Credit may not be extended to any player. The consideration to play a game of chance must be collected in full, by cash or check, in advance of any play. No organization may grant a loan or gift of any kind at any time to a player. Organizations may establish policy concerning acceptance of checks, and need not accept checks. No organization may accept postdated checks, allow a player to alter a check, permit a deferred payment (for example - the organization accounting for the value of charitable gaming tickets played and winning tickets opened, then, at the end of play settling the difference with the player), permit a player to establish an account by a deposit of cash for purpose of making periodic withdrawals, or engage in any similar practice. The organization may allow a player to buy back a check with cash; however, the organization may not unnecessarily delay the bank deposit of that check to accommodate the buy back. The organization may return a player's check to the player as part of a prize payout; however, this may only occur on the specific day in which the check was written.
2. No organization may station or allow to be stationed an automated teller machine or any other electronic device that provides a person with a cash advance or cash withdrawal in an area on the gaming site where games of chance are conducted.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-20. Borrowing from gaming funds prohibited. No person may borrow or use gaming funds as a personal loan of any kind whatsoever. No gaming employee or volunteer may substitute a personal check for any gaming funds.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-21. Use of twenty-one or poker chips as payment for drinks may be allowed. The organization and the lessor of the gaming site may mutually agree to allow players to use twenty-one or poker

chips as payment for drinks. The organization shall redeem those twenty-one or poker chips for cash in accord with ~~either~~ subsection 5 of section 10-04.1-10-10 ~~or subsection 4 of section 10-04.1-10.1-09.~~

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-22. Employees ~~or~~ and volunteers restricted in the play of games of chance.

- 1- ~~No organization may allow any a gaming employee or volunteer to play games any game of chance while on duty at the gaming site; however, if the organization's total gross proceeds for the previous fiscal year, for which gaming tax returns were filed, was twenty-five thousand dollars or less, the organization may allow volunteers, except the bingo caller, to play bingo while on duty at the gaming site. For purposes of this rule, an A gaming employee or volunteer taking a temporary break is still considered on duty. Furthermore, for single games of charitable gaming tickets only, no organization may allow any jar operator to play games of chance until after four hours of active play have occurred since the jar operator was off duty. An organization may allow a gaming employee or volunteer to play bingo, raffles, punchboard, sports-pools, twenty-one, calcuttas, or poker while off duty at the gaming site. An organization may allow a gaming employee or volunteer to play a commingled game of charitable gaming tickets while off duty at the gaming site, but only after three hours of active play have occurred since the gaming employee or volunteer went off duty, or after two deals have been added to the commingled game since the gaming employee or volunteer went off duty. If an organization allows a gaming employee or volunteer to play any game of chance while on or off duty at the gaming site, the organization shall post that fact on the site in a form that is clear and legible, and at a location that is easily visible to the players.~~
- 2- ~~An organization that does allow any employee or volunteer to play games of chance at a time other than the time allowed by subsection 1 shall post that fact on the site in a form that is clear and legible, and at a location that is easily visible to the players.~~
- 3- ~~It is recommended that the organization not allow any employee or volunteer to play games of chance at any of the organization's sites.~~

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-23. Immediate family and common household members should be prohibited from playing games of chance a commingled game of charitable gaming tickets and twenty-one. It is recommended that the organization establish a house policy that prohibits a person, who is a spouse, child, parent, brother, sister, or member of a common household of any of the organization's employees or volunteers working at that site on that day, from playing games of chance at that site on that day. An organization that does allow such a person to play games of chance shall post that fact on the site in a form that is clear and legible, and at a location that is easily visible to the players No organization may knowingly allow a gaming employee's or volunteer's common household member, spouse, child, parent, brother, or sister of a jar operator to play a commingled game of charitable gaming tickets conducted by that jar operator, or of a dealer to play twenty-one conducted by that dealer, at the gaming site while the gaming employee or volunteer is on duty.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-24. Employees and volunteers prohibited from providing any inside information. No employee or volunteer of the organization may provide any inside information to any person, by any means whatsoever, related to any game of chance. However, if the attorney general or local law enforcement officials request that information during the course of an audit, investigation, or review, an employee or volunteer shall provide the information only after the attorney general or local law enforcement officials provide proper identification to the employee or volunteer.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-25. More strict house rules permitted. The organization may establish house rules that are more strict than the provisions of article 10-04.1 and North Dakota Century Code chapter 53-06.1. Examples of more strict house rules are:

1. The organization's gaming employees or volunteers may not play games any game of chance at the organization's sites.
2. No player of any game of chance may be a spouse, child, parent, brother, sister, or member of a common household

member of any of the organization's gaming employees or volunteers working at that site on that day.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-26. Waiver of administrative rules. The attorney general may waive the application of any administrative rule when the attorney general considers it necessary for the interest of the public, organization, ~~or~~ distributor, or manufacturer.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-27. ~~Policies and procedures~~ Policy manual. Every ~~eligible~~ The organization shall have a current written policies and procedures ~~policy~~ manual regarding its conduct and play of games of chance readily available for inspection review by the attorney general, local law enforcement officials, and players at each gaming site licensed to conduct games of chance. This policy manual must at least include the organization's house rules, and procedures for resolving a question, dispute, or violation of law or rules by any person. This policy manual may be not include the organization's written system of internal control prescribed controls required by section 10-04.1-05-02.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-28. Bonding or theft insurance must be considered. The organization's governing board shall at least on an annual basis consider whether to provide or not provide bonding or theft insurance for those gaming employees who are in a fiduciary position of the gaming operation. The governing board's decision must be included in the minutes or other proper records of the organization.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-04-29. Gaming employees and volunteers shall read the law and administrative rules.

1. Each gaming employee and volunteer of the organization shall read the provisions of the law, North Dakota Century Code chapter 53-06.1, and chapters of this article, that relate directly and indirectly to the gaming employee's or

volunteer's job duties. The organization is primarily responsible for designating the provisions of the law and chapters of the North Dakota Administrative Code that must be read by the gaming employee or volunteer.

2. Each gaming employee and volunteer shall acknowledge in writing that the gaming employee or volunteer has read and understands the provisions of the law and chapters of the North Dakota Administrative Code relating to the gaming employee's or volunteer's job duties. The acknowledgment must occur within fourteen days of the date the gaming employee or volunteer commences employment. The acknowledgment must be part of the organization's permanent personnel file of the gaming employee or volunteer.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-30. Discontinuance of gaming. If and when an organization discontinues gaming by license revocation, nonrenewal of a license to conduct games of chance, relinquishment of license, or by any other means, the organization shall return all licenses and site authorizations to the attorney general and return all unplayed games to the attorney general or licensed distributor within five days after discontinuance of gaming.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-04-31. Independent contractor prohibited. Except for a twenty-one drop box cash count by a licensed and bonded provider of security or security agency and a distributor or accountant providing bookkeeping services, no organization may employ an independent contractor for the conduct of games of chance. Only a member or employee of an organization or a member of a bona fide auxiliary, working for or without compensation, may conduct games of chance. An organization may employ, on a temporary basis, a person to serve in an advisory capacity only. This person may not manage, control, or conduct the organization's games of chance.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-05-01. General accounting records. Every An eligible organization shall maintain complete, accurate, and legible general accounting records with detailed, supporting, subsidiary records sufficient to furnish information regarding all transactions pertaining

to games of chance, including gross proceeds, prizes, adjusted gross proceeds, actual cash profit, bank deposits, cash long and short, expenses, eligible use contributions, and all other accounting transactions. Such The records must be retained for a period of three years from the end of the quarter for in which the records are kept gaming activity occurred unless the organization is released by the attorney general from this requirement as to any particular records. The records must be maintained in North Dakota.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-02. System of internal control. In order to adequately determine its liability for taxes under North Dakota Century Code section 53-06.1-12, and the proper determination of net proceeds to be devoted under subsection 7 of North Dakota Century Code section 53-06.1-06, the governing board of every licensed organization shall, prior to the commencement of the actual operation of games of chance, establish and have available for review, a written system of internal accounting and administrative controls relative to gaming operations. When requested by the attorney general, an organization shall file provide a copy of their internal accounting and administrative control system with to the attorney general. The attorney general may require that the organization revise its internal accounting and administrative control system if the system does not meet the internal control objectives provided by section 10-04.1-05-03. No organization may permit any person to review this system, except for the attorney general, law enforcement official, authorized gaming employees and volunteers, and a person serving in an advisory capacity.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-03. Internal control objectives.

1. The system of accounting control relative to gaming operations must provide a plan of organization and a description of the procedures and records which are designed to provide reasonable assurance that the following general objectives will be attained:
 - a. Transactions are executed in accordance with management's general or specific authorization.
 - b. Transactions are recorded as necessary to properly record gaming proceeds, and to maintain accountability for assets.

- c. Access to assets is permitted only in accordance with management's authorization.
 - d. The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to differences.
2. The system of administrative control ~~relative to gaming operations~~ must provide a plan of organization which includes appropriate segregation of functional responsibilities and sound practices to be followed in the performance of these duties by competent and qualified personnel. The plan of organization must describe the interrelationship of functions and the division of responsibilities upon which the system of internal control ~~relative to gaming operations~~ is based.
 3. Should the attorney general determine that a system of internal control or any amendment thereto is inadequate, the attorney general shall give written notice to the organization of ~~such that~~ inadequacy. Upon receipt of ~~such that~~ notice, the organization shall take immediate steps to remedy the inadequacy and shall notify the attorney general in writing of ~~such those~~ steps, including the filing of any necessary amendments to the system. Should the organization fail to remedy the inadequacy within sixty days following receipt of ~~such that~~ notice, it is deemed to be in violation of this article and is subject to disciplinary actions in accordance with the rules and law. The attorney general shall publish, and make available to the licensed organizations, general guidelines for the organizations' use in developing internal control systems.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-04. General gaming bank account - Class A and class B.

1. Every eligible A class A and class B organization shall maintain at least one checking general gaming bank account at a financial institution, located within the state of North Dakota, for each license issued. This account may be used for payment of gaming expenses. A class A and class B organization may transfer funds to the organization's general operating account from which expenses may be paid. The general operating account must be at a financial institution located within the state of North Dakota. All documentation supporting any gaming expense must be maintained in the state of North Dakota.

2. Every organization shall furnish an "authorization to inspect bank records" to the attorney general (subsection 5 of section 10-04.1-03-04).
- ~~3.~~ Interest earned on this account's funds must be included in gross proceeds is classified as other income.
3. Service fees of this account are a gaming expense.
4. As provided by subsection 1 of North Dakota Century Code section 53-06.1-11 and subsection 1 of section 10-04.1-07-07, no organization may deposit nongaming funds into the general gaming bank account. However, an organization may deposit nongaming funds into the general gaming bank account if such that deposit is a reimbursement of excess gaming expenses (section 10-04.1-05-08).
5. ~~Class A class A organizations must~~ organization shall maintain the general gaming bank account for the devotion of net proceeds ~~for the actual~~ to eligible uses. These disbursements are subject to the time limitation provided by subsection 2 of section 10-04.1-12-01. ~~Transfers may not be made~~ No class A organization may transfer intended eligible use funds to the general fund operating account of the organization but. Eligible use disbursements must be made directly to the ultimate use. Gaming expenses associated directly or indirectly with gaming activity are not an eligible use.
6. Class B organizations ~~must shall~~ also maintain a charitable gaming trust fund bank account. See section 10-04.1-05-05.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-05-05. Charitable gaming trust fund bank account - Class B.

1. ~~In order to~~ To ensure that the entire net proceeds are devoted to an eligible uses use, a class B organizations organization that file files a tax return under section 10-04.1-11-01 shall establish a charitable gaming trust fund bank account at a financial institution, located within the state of North Dakota, as a separate bank account. This Except to reimburse the account for a negative imbalance, this account must receive only those transfers from the special general gaming bank account established for each license number (section 10-04.1-05-04). Such The transfers constitute the devoting of net proceeds (section 10-04.1-12-01). From this account the disbursements for the actual eligible uses must be made and in no instance may the balances of this account be used for any

other purpose. ~~These~~ If an organization may use the gaming net proceeds for uses benefiting that organization, these disbursements are not subject to any time limitations provided that the organization reapplies for a license to conduct games of chance before July first of each year or does not relinquish the license; otherwise, the disbursements must occur within ninety days of the expiration or relinquishment of the license unless an extension is requested in writing of the attorney general and an extension is granted. If an organization cannot use gaming net proceeds for uses benefiting that organization, these disbursements are subject to the time limitations provided by subsection 2 of section 10-04.1-12-01. Transfers may not be made to the general fund operating account or any other bank account of the organization but must be made to the ultimate use. Gaming expenses associated with gaming activity are not an eligible use. However, if compensation that qualifies as an eligible use is paid from the organization's general operating account, the organization may transfer funds to this account. This transfer must be documented by a supporting schedule.

2. Interest earned on this account's funds must be included in the account and disbursed for eligible uses.
3. Service fees must be an adjustment to the account.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-02, 53-06.1-11, 53-06.1-17

10-04.1-05-05.1. Supplemental bank account - Class A. A class A organization may establish no more than one supplemental bank account for a predesignated purpose to which gaming net proceeds may be transferred. This bank account may only be used to temporarily hold the net proceeds pending the devotion to an eligible use. The devotion of these funds is subject to the time limitations provided by subsection 2 of section 10-04.1-12-01.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-06. Method of accounting.

1. Every eligible organization shall determine its gross proceeds and prizes for games of chance on the following basis:
 - a. Cash basis - bingo (including sales of gift certificates), charitable gaming tickets, twenty-one, poker, and series of rafflewheel ticket games tickets.

- b. Accrual basis - charitable gaming tickets club specials, tip boards, seal boards, punchboards, professional sports pools, calcuttas, and raffles (excluding series of rafflewheel ticket games tickets).
2. Every eligible organization shall determine its expenses on either the cash or accrual basis which must be consistently applied, except:
 - a. Inventory items of punchboards, series of rafflewheel tickets, sports-pool boards, calcutta boards, deals of charitable gaming tickets, including club specials, tip boards, and seal boards, and paper bingo cards must be determined on the accrual basis.
 - b. The ~~tax~~ taxes imposed by North Dakota Century Code ~~section~~ sections 53-06.1-12 and 53-06.1-12.2 must be deducted on the accrual basis.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-07. Special expense restrictions.

1. Every licensed organization is allowed ~~a forty five percentage~~ an expense limitation of fifty percent of the first two hundred thousand dollars of total adjusted gross proceeds for expenses incurred in and forty-five percent of adjusted gross proceeds in excess of two hundred thousand dollars, per quarter, for the conduct of games of chance. The dollar amount of the ~~forty five~~ expense percentage limitation may be used for any purpose, provided that ~~such~~ the use does not violate North Dakota Century Code chapter 53-06.1 and any amendments thereto, or any administrative rules adopted or formal directives issued by the attorney general. ~~However,~~ the organization shall report the total dollar amount of its actual gaming expenses on the North Dakota gaming tax return to enable the attorney general to determine if the organization's actual expenses were greater than the forty five percentage limitation for expenses on a quarterly basis.
2. No organization may base any employee's compensation on a participatory percentage of the actual or budgeted gross proceeds. ~~Compensation includes wages, salaries, bonuses, and all other forms of remuneration for services rendered, adjusted gross proceeds, or net proceeds of gaming activity.~~ The organization may pay fixed bonuses through an incentive program. Examples of authorized fixed bonuses include:

- a. Bonus of a certain amount to the gaming employees or volunteers of a gaming site if the organization's percent-of-accuracy of commingled games of charitable gaming tickets for that gaming site for a quarter was ninety-eight and one-half percent or greater. Percent-of-accuracy is computed as actual cash profit divided by actual adjusted gross proceeds. No bonus may be limited to only selected gaming employees or volunteers.
 - b. Bonus of a certain amount to the gaming employees or volunteers of a gaming site if the organization's actual net income for that gaming site for a quarter equaled or exceeded the budgeted net income. Net income is computed as gross proceeds less prizes, North Dakota excise tax, gaming tax, and all direct and indirect expenses regardless of the expense percentage limitation amount. No bonus may be limited to only selected gaming employees or volunteers.
3. In addition to the rent restrictions provided by subsection 3 of section ~~10-04.1-04-10~~, the following apply:
- a. The rent must be reasonable. Factors to consider in determining reasonable rent are time, floor space, local prevailing rates, availability of space, and available services.
 - b. No rent can be paid by an organization determined to be closely connected in accordance with section ~~10-04.1-03-03~~.
 - c. The organization may pay rent for equipment used to conduct games of chance.
 - d. ~~For other than a lessor of the organization's gaming site, the organization may pay rent for office and storage space, the use of which is directly attributable to the ancillary functions necessary for the conduct of games of chance. This rule may be waived if the organization requests, in writing, approval from the attorney general and approval is granted.~~
- ~~4.~~ For any advertising done, by the lessor or any other person, related to games of chance at a site, the organization's share of expense, if any, may not exceed a reasonable prorated amount of the total expense based on the ratio that the advertisement advertises gaming in relation to the whole advertisement. Any payment for advertising by an organization that is other than reasonable will create a presumption of a circumvention by the organization of the rent restrictions of this section.

- ~~5-~~ 4. The amount of any player check returned by a bank to the organization as unpaid for whatever reason, including nonsufficient funds, and is uncollectible by the organization is an a gaming expense towards the ~~forty five~~ expense percentage limitation and may be paid by the organization's general operating bank account or general gaming bank account.
- ~~6-~~ 5. The ~~forty five~~ expense percentage limitation for expenses amount or any other source of funds may not be used by the organization for any purpose to circumvent the rent restrictions of North Dakota Century Code sections 53-06.1-03.1, 53-06.1-03.2, 53-06.1-03.3, or subsection 3 of section 10-04.1-04-10, or of this section.
- ~~7-~~ 6. If a door prize is awarded as a promotion of games of chance, the organization's cost of the door prize may be either is a gaming expense towards the ~~forty five~~ expense percentage limitation or a nongaming expense and may be paid from the organization's general operating bank account or general gaming bank account. The cost of the door prize may not be deducted as a prize towards the adjusted gross proceeds.
7. Effective January 1, 1990, a net cash short incurred in games of chance for a quarter is classified as a gaming expense towards the expense percentage limitation. A net cash long incurred in games of chance for a quarter is classified as income on the gaming tax return. However, a cash short related to a game that is determined by the attorney general to be defective may be a deduction toward the adjusted gross proceeds.
8. The monetary fine imposed on an organization by the attorney general in accordance with section 10-04.1-13-04.1 is a gaming expense towards the expense percentage limitation and may be paid by the organization's general operating bank account or general gaming bank account.
9. Only unexchanged and unopened charitable gaming tickets of a commingled game may be accounted for as unsold or defective when the game is closed for reporting the game's activity on the gaming tax return. No exchanged set, in part or as a whole, may be accounted for as unsold or defective. For a stapled set of jar tickets (for example, four jar tickets stapled as one set), no jar ticket of that set may be opened or partially opened for that stapled set, in part or as a whole, to be accounted for as unsold or defective. For an unstapled jar ticket, that jar ticket may not be opened or partially opened for that jar ticket to be accounted for as unsold or defective. An organization shall account for any unsold or defective jar tickets of a partial stapled set of jar tickets (set containing less than the standard number of jar tickets stapled as one set) and any single unsold or defective jar ticket at a proportional selling price of a

stapled set of jar tickets. For example, if the standard number of jar tickets in a stapled set is four and this set sells for one dollar, a single unsold or defective jar ticket is to be accounted for as twenty-five cents.

10. If an organization exchanges foreign currency into United States of America currency, any amount of gain or loss incurred on the exchange rate between the organization's value of the foreign currency to a player and the bank's value of that foreign currency when it is exchanged is a gaming expense toward the expense percentage limitation.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-11, 53-06.1-17

10-04.1-05-08. Expense limitation. If the dollar amount of the forty five expense percentage limitation for expenses amount is less than the actual expenses for a fiscal year, the excess of the actual expenditures is required to be reimbursed to the general gaming bank account by the general operating account of the licensed eligible organization by the due date of the North Dakota gaming tax return for the quarter ended June thirtieth. Funds given Net proceeds devoted to the licensed eligible organization by its own gaming operation, or any other gaming operation in this state, may not be used to pay the excess of expenses over the expense percentage limitation. The organization is ultimately liable for any unreimbursed excess gaming expenses.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-05-09. Payment and reconciliation of expenses. Where gaming expenditures are not paid directly from the general gaming bank account, as in the case of the allocation of salary expenses, reimbursement to the disbursing fund from the general gaming bank account must be made by the due date of the North Dakota gaming tax return. Such reimbursement must be supported by a detailed reconciliation. Tournament income and prize. A tournament fee charged a player for entry into a twenty-one or poker tournament and the cost of the tournament prize awarded must be netted to determine the amount reportable on the North Dakota gaming tax return. The net amount for twenty-one is classified as other income. The net amount for poker is classified as gross proceeds.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC ~~53-06.1-11~~, 53-06.1-17

10-04.1-05-10. Reconciliation of net proceeds carryover and trust fund carryover.

1. In order for the organization to timely identify and resolve any negative imbalance between the organization's general gaming bank account check register balance and the net proceeds carryover, the organization shall do a reconciliation which must be filed with the gaming tax return for the quarter ended June thirtieth. The organization shall use a reconciliation form prescribed by the attorney general.
2. For a class B organization, in order to timely identify and resolve any negative imbalance between the organization's charitable gaming trust fund bank account check register balance and the trust fund carryover, the organization shall do a reconciliation which must be filed with the gaming tax return for the quarter ended June thirtieth. The organization shall use a reconciliation form prescribed by the attorney general.
3. The amount of any negative imbalance, caused by any reason whatsoever, determined by subsections 1 and 2 must be deposited in the respective general gaming bank account or charitable gaming trust fund bank account by the organization's general operating account of the licensed eligible organization by the due date of the North Dakota gaming tax return for the quarter ended June thirtieth. Funds given to the licensed eligible organization by its own gaming operation, or any other gaming operation in this state, may not be used to pay the imbalance or any other time authorized by the attorney general. The organization is ultimately liable for any negative imbalance. The organization shall provide the attorney general with evidential documentation of the reimbursement of any negative imbalance. This documentation must accompany the reconciliation form referenced by subsections 1 and 2.
4. When requested by the attorney general, the organization shall do a reconciliation as provided by subsections 1 and 2 on a more frequent basis than annually.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-05-11. Valuation of prizes. For purposes of computing adjusted gross proceeds, noncash prizes must be valued at actual cost to the organization. A donated merchandise prize is valued at zero for computing prizes on the gaming tax return.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-05-13. Signature attestation.

1. An organization's governing board member or top official shall actually sign the North Dakota gaming tax return as an attestation that the gaming tax return accurately represents the organization's gaming activity.
2. The signature or initials of any person on a gaming record, report, or statement attests that to the best knowledge of that person the information on the gaming record or report is true and correct. If a person knowingly signs a false gaming record or report, it is a class A misdemeanor.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-16, 53-06.1-17

10-04.1-05-14. Independent audit required for certain organizations. An organization that has total adjusted gross proceeds of four hundred thousand dollars or more for a fiscal year, July first through June thirtieth, shall have an independent financial and compliance audit conducted of the organization's gaming operation. The audit must be conducted in conformity with generally accepted auditing standards of the American institute of certified public accountants. The organization shall provide a copy of the complete audit report to the attorney general. The audit must meet the objectives prescribed by the attorney general. This rule applies to the fiscal year beginning July 1, 1990.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-06-01. Bingo. "Bingo" is ~~that~~ a game of chance in which each player receives one or more cards, for which consideration has been paid, each of which is marked off into squares arranged in vertical and horizontal rows. Each playing square is designated by a number, letter, or combination of numbers and letters. The organization announces the prize prior to the start of each game unless a fixed schedule of games and their prizes is posted on the site in a form that is clear and legible and at a location that is easily visible to the players. Except for the conduct of "bonanza bingo" (see subsection 20 of section 10-04.1-06-03), the players manually cover squares as the ~~operator of such game~~ bingo caller announces the number, letter, or combination of numbers and letters either displayed by an electronic random number generator or appearing on a ball selected by chance, either manually or mechanically, from a receptacle in which have been

placed balls bearing numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the squares. The winner of each game is the player or players first properly covering a predetermined and distinct pattern of squares on a card being used by the player or players. The pattern may not be a certain number of randomly positioned squares selected by the player or selected by the particular numbers and letters of the bingo balls called by the organization. The organization shall conspicuously post a notice on the site containing the organization's special policies related to a sharing of the designated prize required as a result of multiple winners on the last immediately called number on identically priced or differently priced bingo cards (for example, the sales value selling price and prize payout value of gold colored premium bingo cards being greater than the sales value selling price and prize payout value of green colored regular cards), including. The policies must include the following:

1. If the designated prize consists of is cash and all the verified winners bingo on identically priced bingo cards, the total amount of the cash prize must be divided equally between or among the verified winners, provided, however, that. However, the organization has the option of rounding may round fractional dollars to the next higher lowest or highest dollar.
2. If the designated prize is cash and the verified winners bingo on differently priced bingo cards, the organization shall do one of the following:
 - a. Award each verified winner of each differently priced bingo card the designated cash prize for the respective priced bingo card. For example, if two players bingo on regular cards with a prize value of sixty dollars and one player bingos on a premium card with a prize value of one hundred twenty dollars, the organization shall award sixty dollars to each of the two players who bingo on regular cards and award one hundred twenty dollars to the player who bingos on the premium card.
 - b. Award each verified winner of each differently priced bingo card a distributive share of the designated cash prize for the respective priced bingo card. For example, if two players bingo on regular cards with a prize value of sixty dollars and one player bingos on a premium card with a prize value of one hundred twenty dollars, the organization shall award thirty dollars to each of the two players who bingo on regular cards and award one hundred twenty dollars to the player who bingos on the premium card.
 - c. Award each verified winner of each differently priced bingo card a ratable part of the designated cash prize for the respective priced bingo card. This ratable part is the ratio that each winner is in relation to the total

number of winners of all the differently priced bingo cards. To illustrate, if three players bingo on differently priced bingo cards, each player is one of three players and therefore is to be awarded one-third of the designated cash prize for each player's respectively priced bingo card. For example, if two players bingo on regular cards with a prize value of sixty dollars and one player bingos on a premium card with a prize value of one hundred twenty dollars, the organization shall award twenty dollars (sixty dollars divided by three) to each of the two players who bingo on regular cards and award forty dollars (one hundred twenty dollars divided by three) to the player who bingos on the premium card.

3. If the designated prize consists of an item of tangible personal property, is merchandise, or other things other than cash and this prize cannot be divided, the bingo organization shall award, if the designated prize cannot be divided, substitute prizes to do one of the following:

a. Award each verified winner, a substitute merchandise prize provided, however, that the substitute prizes must, insofar as possible, be of equal value to each other and as a whole, equal the current retail price of the original designated prize. Merchandise prizes A merchandise prize may be redeemable or convertible into cash at the discretion of the organization. Except for gift certificates provided by subsection 5 of section 10-04.1-06-03, no bingo prize may be a chance in the entry in any game of chance.

b. Award a certain cash split amount that must be disclosed in the bingo program and be announced prior to the bingo session.

c. Conduct a playoff game between the verified winners.

~~3-~~ 4. Notwithstanding the foregoing subsections 1, 2, and 3, an organization may establish minimum prizes.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-07, 53-06.1-17

10-04.1-06-02. Bingo equipment to be used. The conduct of bingo, including bingo conducted in a bar, must include the following items:

1. A blower machine or other device from which balls are withdrawn or an electronic random number generator.

2. If an electronic random number generator is not used, a set of balls bearing the numbers, letters, or combinations of numbers and letters corresponding to the bingo cards in play, either seventy-five or ninety balls. The balls must be available for inspection by the players before a bingo session begins to determine that all are present and in operating condition. Each numbered ball must be essentially equal as to size, weight, shape, and balance and as to all other characteristics that may control their selection and all must be free from any defects and be present in the receptacle before each game is begun.

3. Paper bingo cards (synonymous with specials, throwaways, and disposables) that provide a player with the opportunity to select and print the numbers on the card may be used; provided, that at least all of the following requirements are met:
 - a. The cards must be at least two-part carbonless and contain a control number.

 - b. The card must have at least twenty-five squares arranged in five vertical and five horizontal rows with a maximum of one free space. The letters B, I, N, G, O must be preprinted above the five vertical columns.

 - c. ~~All~~ Each of the squares must have a one number printed therein by the player; however, the middle space may be a free space. The numbers printed must correspond with the numbers and letters of the bingo balls, as follows:
 - (1) Numbers one through fifteen in the "B" column.
 - (2) Numbers sixteen through thirty in the "I" column.
 - (3) Numbers thirty-one through forty-five in the "N" column.
 - (4) Numbers forty-six through sixty in the "G" column.
 - (5) Numbers sixty-one through seventy-five in the "O" column.

 - d. The numbers must be printed ~~clearly~~ legibly, using a ballpoint pen, by the player.

 - e. A number cannot be repeated on the card.

 - f. After the card is completed, the player shall provide the organization with the ~~duplicate~~ original part of the card prior to the start of the game. The player retains the ~~original~~ duplicate part of the card.

- g. The organization shall verify the winning card by matching the original part of the card to the duplicate part.
 - h. The card must be voided if it is unclear or altered.
4. ~~Other equipment may be used for the purpose of displaying numbers and letters called to the public, and such furniture and sound amplification system as is necessary for the convenience and comfort of the players and the organization. On a daily basis the organization shall test its bingo equipment to determine whether it is working properly. If the equipment is malfunctioning or a light bulb on a flashboard is burned out, the organization shall immediately arrange for the repair of the equipment and replace the light bulb.~~

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-03. Manner of conducting bingo. The conducting of a bingo session must be according to the following rules:

- 1. The organization shall post a clear and legible sign on the site where bingo is played containing the rules governing the conduct of bingo.
- 2. No organization may reserve, or allow to be reserved, any bingo card for use by players except braille cards or other cards for use by legally blind or disabled players.
- 3. Legally blind players may use their personal braille cards when an organization does not provide ~~such~~ those cards. The organization has the right to inspect, and to reject, any personal braille card. A legally blind or disabled person may use a braille card or reserved hard card in place of a purchased paper bingo card.
- 4. If an organization does not restrict duplicate hard cards or duplicate paper bingo cards from being in play for a game, the organization shall conspicuously post that fact or notify all players prior to their purchase of bingo cards that there is a possibility that duplicate cards will be in play possibly resulting in multiple winners for a game. Duplicate hard cards are cards with the same series number (card number) regardless of the color of the cards. Duplicate paper bingo cards are cards with the same series number (card number) regardless of the color of the cards or manufacturer assigned serial number.
- 5. No organization may ~~have advance sales of bingo cards, sell gift certificates towards the purchase of bingo cards, or~~

award gift certificates as bingo prizes for a bingo session unless at least all of the following requirements are met:

- a. The advance sales and gift certificates must be individually accounted for by the organization.
- b. The organization shall issue a receipt to the purchaser or bingo winner to evidence the sale or win.
- c. The player shall redeem the receipt and the receipt must be retained by the organization.
- d. The player is issued the bingo cards at the gaming site when the receipt is redeemed (subsection 6 of section 10-04.1-06-03).

5.1. If an organization changes a publicly announced bingo program for a session, the organization shall notify the player of the change prior to the player's purchase of bingo cards for that session at the gaming site.

5.2. If an organization sells two or more differently priced bingo cards or packages (for example, regular, premium, and super) for a particular bingo game that provide for two or more different bingo prize values, the organization shall differentiate each differently priced card by a method that enables the organization and players to clearly and easily distinguish which specific priced card incurred the bingo for the respective bingo prize value.

5.3. If an organization accepts a bingo card or package discount coupon, the redeemed coupon must be signed by the player. If a specific dollar value is not preprinted on the redeemed coupon, the organization shall write the value of the bingo card or package purchased by the player on the face of that coupon. The organization shall retain the coupon as part of the bingo session's daily accounting records. The coupon must be retained for at least one year.

6. All issuances of bingo cards to the players must take place upon the site immediately preceding or during the bingo session for which the cards were purchased.

7. Two or more sets of paper bingo cards may not intentionally be used at the same time if they have identical manufactured assigned serial numbers when paper bingo cards are subdivision b of subsection 5 of section 10-04.1-06-09 is being used for receipting gross proceeds for a particular bingo game.

8. Bingo cards must be sold and paid for prior to the start of a specified game or specified number of games when they are progressive. Cards may not be sold for a game in progress

after the first number of that game is called or displayed. However, this subsection does not apply to a "bonanza bingo" game.

- 8.1. Unless the gaming site incurs an electrical power loss, there is inclement weather, the organization experiences an extraordinary incident, or a player has an emergency, no organization may refund to a player any part or all of the player's purchase price of bingo cards.
9. No player may separate a paper bingo card when there are two or more faces on one sheet (for example, a ~~"three on"~~ "three-on-one" which has three faces on one sheet).
10. No player may play bingo cards not purchased from the organization for that bingo session or more bingo cards than were actually paid for. ~~This rule does not prohibit~~ At the organization's discretion, a player ~~from sharing~~ may share the player's purchased bingo cards or package with another person. The organization shall post its policy at a location that is easily visible to players or shall disclose this policy in the bingo program.
- 10.1. If a person has a bingo card in the person's possession and the person has not paid for the privilege of playing the bingo card for the game being conducted or the person has not been shared a bingo card or package (see subsection 10) by another person, the organization shall apply particular procedures to ensure that the person does not play the bingo card. At a minimum, the organization shall require the person to turn the bingo card face down. This rule generally applies when an organization sells bingo hard cards prior to the start of each individual bingo game.
11. No bingo game may be conducted to include a winner determined other than by the matching of letters and numbers on a bingo card with letters and numbers ~~called~~ actually drawn by the organization, in competition among all players in a bingo game.
12. The particular arrangement of numbers required to be covered in order to win a bingo game must be clearly described and verbally announced to the players immediately before each game is begun unless the description of the game is the same as the preceding game.
- 12.1. ~~For~~ If an organization conducts a bingo game in which either a potential cash prize ~~and/or~~ or the current retail price of a potential merchandise prize is five hundred dollars or greater, or if an organization sells two or more different priced bingo cards for a particular bingo game (see subsection 5.2), the organization shall document the winning cards card by either one of the following methods:

- a. Use an electronic bingo card ~~validator~~ verifier.
 - b. ~~Tape record or maintain~~ Maintain a written record of the called bingo numbers, including the ~~winning series number stated aloud by an organization employee or volunteer (see subsection 17 of section 10-04.1-06-03)~~. The organization shall retain the tape recording or written record for at least a period of thirty days information specified by paragraphs 1 through 7 of subdivision c.
 - c. Audio tape the bingo caller during the particular bingo game and retain the tape for at least thirty days. When a player bingos, the gaming employee or volunteer shall state in a clear and loud tone the following:
 - (1) Game number.
 - (2) Card series number, if a paper bingo card incurred the bingo.
 - (3) Cash register receipt number, if applicable.
 - (4) Type (regular, premium, super) of card.
 - (5) Amount of the cash prize or a description of the merchandise prize won.
 - (6) Last number called.
 - (7) Pattern on which the player binged.
13. Immediately following the drawing of each ball in a bingo game, the caller shall manually display the letter and number on the ball to the players in that room. However, this subsection is not applicable to "speedball" bingo or when an organization uses a television monitor to display the letter and number on the ball.
- 13.1. If an electronic random number generator is used in a bingo game, the organization shall ensure that the letter and number displayed is visually seen by the players in that room.
14. The ~~letter~~ letters and ~~number either~~ numbers on the ~~ball~~ balls or displayed by an electronic random number generator must be called out prior to the drawing in exact sequence of the next ball balls drawn from a blower or wire cage or prior to the display of in exact sequence of the next letter letters and number numbers displayed by an electronic random number generator.
15. The use of a flashboard is optional and the number and letter lit is not necessarily official. The actual number and letter

- on the ball drawn, rather than the letter and number called, is official.
16. A Except for a "bonanza bingo" game, a winner is determined when a ~~specified~~ predetermined and distinct pattern of ~~called drawn~~ numbers appears on a card on the immediately last drawn letter and number and a player has timely called bingo.
 17. Immediately upon a bingo player declaring a winning combination of letters and numbers, the winning series number must be stated aloud by ~~an organization~~ a gaming employee or volunteer. The winning card must be verified by an organization employee or volunteer and at least one neutral player unless an electronic bingo card ~~validator~~ verifier is used.
 - 17.1. An organization may offer a variety of bingo prizes for a bingo game that enables a winning player to select or win one of several predetermined prizes or an additional prize through the play of a game of skill and not a legal or illegal game of chance if the player is not required to give anything of value, such as the player's cash or merchandise prize, to participate. The organization shall inform the player of the variety of bingo prizes prior to the selection or play by the player.
 - 17.2. The organization may conduct a qualifying type bingo game whereby a player who wins a certain game wins, besides the designated prize, an opportunity to play in a special bingo game, along with other qualifying players, at a particular time and date for a certain prize. The player shall purchase a bingo card in order to participate in the special bingo game.
 - 17.3. A player may bingo more than one time on the same bingo card when an organization plays more than one predetermined and distinct pattern on a bingo card for one or more progressive type games.
 - 17.4. The organization shall conspicuously post a clear and legible notice on the site at a location that is easily visible to the players regarding the organization's policies of when a bingo player has timely called bingo and which gaming employees or volunteers are authorized to acknowledge the player's called bingo. The organization shall announce these policies prior to the start of each bingo session. The organization shall adopt one of the following three option policies regarding a timely called bingo:
 - a. A bingo player is considered to have timely called bingo if the player called the word "bingo" or other word required by the organization before the bingo caller

utters any sound of the letter or number of the next bingo ball to be called.

b. A bingo player is considered to have timely called bingo if the player called the word "bingo" or other word required by the organization before the bingo caller verbally announces the whole letter of the next bingo ball to be called.

c. A bingo player is considered to have timely called bingo if the player called the word "bingo" or other word required by the organization before the bingo caller verbally announces the whole letter and number of the next bingo ball to be called.

17.5. If an organization awards a bonus to a winning bingo player when the bonus is based on a factor (player wearing a particular cap) incidental to the bingo program, the bonus opportunity must be disclosed in the bingo program, calendar, or flyer, or be announced prior to the bingo session and must be accounted for by the organization.

18. Upon a bingo player declaring a winning bingo, if the next ball is out of the machine, it must be removed from the machine and must be the next ball to be called in the event the declared winning bingo is not valid.

19. Cash register receipts and ticket receipts for bingo must be kept in view at all times. A player's bingo is void if the player has more bingo cards than that represented by the cash register receipt or ticket.

20. No organization may conduct "bonanza bingo" unless at least all of the following requirements are met:

a. The organization ~~calls~~ initially draws a predesignated quantity of bingo numbers (for example - ~~fifty~~ forty-five numbers) before the actual playing of that bonanza bingo game.

b. Bonanza bingo cards ~~shall~~ must be sealed when they are sold to the players.

c. Bonanza bingo cards can be sold throughout the bingo session. However, no bonanza bingo cards may be sold after the actual bonanza bingo game starts which is when the organization calls the next continuous number (for example - ~~fifty first~~ forty-sixth number) ~~during the actual bonanza bingo game.~~

d. Prior to the start of the actual bonanza bingo game, the organization shall do a full accounting of the floorworkers' sales of bonanza bingo cards as prescribed

by section 10-04.1-06-10. This accounting requires that floorworkers return the unsold "singles" and "discounted sets" of bonanza bingo cards and turn in the exchanged (players' partially played cards) bonanza bingo cards and the cash related to the sold cards. No floorworker may turn in any exchanged bonanza bingo card to the organization after the start of the actual bonanza bingo game.

- e. Prior to the start of the actual bonanza bingo game, an organization employee or volunteer and at least one neutral player shall verify that the actual number and letter on the balls initially drawn are correctly displayed on a flashboard or any other type of posting device.
 - f. No player wins unless all the numbers for the predetermined bingo pattern on the player's bonanza bingo card have been called.
 - ~~e.~~ g. If a player bingos before the next continuous number (for example - ~~fifty first~~ forty-sixth number) is called, the player or players must be awarded the designated prize. During the actual bonanza bingo game, the organization shall call the next continuous number, if necessary, (for example - ~~fifty first~~ forty-sixth number) and so on until a player successfully bingos and is awarded the designated prize.
 - ~~f.~~ h. A bonanza bingo game may not extend beyond a bingo session.
 - i. If an organization's policy permits a player to exchange a partially played bonanza bingo card for a new bonanza bingo card and pay a discounted or exchange card price for the new card, the organization shall retain the player's partially played card as part of the daily accounting records of that bingo session. The exchanged bonanza bingo cards must be retained for at least thirty days.
21. No ~~floorworker~~ gaming employee or volunteer may assist a player in the play of the player's bingo card. However, a special gaming employee or volunteer whose sole function is to assist ~~players~~ a handicapped player may assist ~~a~~ that player.
22. No organization may allow a person under eighteen years of age to play bingo at the gaming site unless at least one of the following conditions apply:
- a. The person is accompanied by an adult who is at least eighteen years of age when that person buys the bingo card or package and an adult accompanies that person during the

whole bingo session. The adult may not be a gaming employee or volunteer on duty at the bingo session.

b. The bingo session is conducted by an organization that has been issued a local permit.

c. The bingo session's potential primary prize does not exceed one thousand dollars, and the aggregate of potential bingo prizes does not exceed six thousand dollars annually.

23. No organization may conduct a game of charitable gaming tickets during the time interval between bingo sessions unless the organization allows any bona fide person to enter the site during this interval to play charitable gaming tickets.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.1, 53-06.1-17

10-04.1-06-07. Cash register receipts for recording gross proceeds. The cash register receipting method ~~is normally~~ may be used by an organization to record ~~the bingo~~ gross proceeds by the issuance of consecutively numbered cash register receipts to account for the sale of bingo card packages, bingo hard cards, and bingo paper cards, excluding any floorworker sales.

1. If a cash register is used, a consecutively numbered receipt containing at least the following information must be provided to the player:
 - a. Name of the gaming site or organization.
 - b. Date of the bingo session.
 - c. Amount of money paid for the opportunity to play Selling price of the bingo card or package.
 - d. Type of bingo ~~cards~~ card or package sold (for example, a particular bingo package regular, premium, or super).
 - e. Consecutive customer receipt number.
2. The cash register must have at least a consecutive four digit customer receipt number which does not return to zero at the conclusion of any period of use. ~~Further~~ Also, any cash register used must retain its transaction count between uses whether or not its power source is interrupted.
3. The cash register must have sufficient keys to record separately each type of ~~sale~~ bingo card or package sold and

must provide a total for each type of sale recorded. A discounted bingo card or package sold must be accounted for by a separate key or a method that will adequately determine the total discount for each type of sale recorded.

4. All cash register receipts for voids, underrings, overrings, no sales, and any other related receipts must be retained with the daily bingo records.
5. All transactions, customer receipt numbers, and control totals must be recorded on the tape retained in the cash register. The internal tape, showing these transactions, must be retained with the daily bingo records. If the cash register is used by the organization for purposes other than recording the receipts from bingo, the internal cash register tapes from the other uses must also be retained for at least three years.
- ~~6. Written approval must be obtained from the attorney general for use of a cash register which does not meet the requirements of this section but may contain adequate control features.~~

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-08. Ticket receipts for recording gross proceeds. The ticket receipting method ~~is normally~~ may be used by an organization to record ~~the bingo~~ gross proceeds by the issuance of consecutively numbered tickets as receipts to account for the sale of bingo card packages, bingo hard cards, and bingo paper cards, including any floorworker sales. If tickets are used for receipting, the following conditions must be met:

1. All tickets on a roll must be preprinted with a consecutive number.
2. Tickets must be issued consecutively off of a roll.
3. A log must be maintained, listing the date each roll of tickets is purchased or obtained by the organization, the color, the beginning ticket number, the ending ticket number, and the number of tickets on that roll. All ~~tickets~~ ticket rolls received must be entered in the log upon being received.
4. The organization shall record in its daily records, the color of the ticket, the selling value of the ticket, the lowest numbered ticket, and the highest numbered ticket issued as a receipt from each separate roll of tickets used. Each ticket on a like colored roll must be valued at the same price for computing actual gross proceeds. Tickets issued for each type

of sale must be recorded separately. Any ticket not issued as a receipt during a session that bears a number falling below the highest numbered ticket issued along with any leftover tickets from the end of the roll which will not be sold must be retained by the organization as a part of its daily records and must not be otherwise used or disposed of by the organization.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-09. Paper bingo cards for receipting gross proceeds. The paper bingo card receipting method ~~is normally may~~ be used by an organization to record ~~the bingo~~ gross proceeds from the sale of paper bingo cards ~~which are not accounted for by any other receipting method~~. Paper bingo cards themselves may be used as the receipt required by this rule provided that:

1. Each card must have printed on its face both its individual series number and the serial number assigned by the manufacturer. Each set of cards must have the individual series numbers consecutively numbered through the set, from the first card to the last card.
2. Each card sold represents a specific amount of money which has been paid to the organization.
3. Each card containing the same manufacturer assigned serial number is consecutively issued and sold for the same price as each other card with the same manufacturer assigned serial number sold for any particular bingo game.
4. A log must be maintained, listing the date each set of cards is purchased or obtained by the organization, manufacturer assigned serial number, color, number of faces per card, beginning series number, and number of cards per set. All cards received must be entered in the log upon being received.
5. The daily records contain information as prescribed by either of the following methods;
 - a. The number of cards taken from inventory which must be physically counted and verified by at least two persons who shall sign or initial ~~such~~ that verification, the color of the cards, and the selling price of the cards. All cards issued for each type of sale must be recorded separately. The number of cards ~~issued~~ taken from inventory but not sold must be physically counted and verified by at least two persons who shall sign or initial ~~such~~ that verification prior to the cards being returned

to inventory. The daily records must include the total number of cards issued taken from inventory, returned to inventory, and sold, and the total amount of actual gross proceeds and cash long or short (difference between the number of cards taken from and returned to inventory).

- b. The manufacturer assigned serial number, color of the card, selling price of the card, beginning series number, and ending series number issued as a receipt for each set of cards used. Cards issued for each type of sale must be recorded separately. However, when there are two or more faces on one sheet (for example, a "three-on" "three-on-one") and therefore, two or more series numbers appear on a card the lowest series number must be used to determine the beginning number sold and the ending number sold. Each time the series numbering of the cards breaks, a separate entry must be made in the records. Cards which were not issued as receipts during a session, that bear a series number below the highest numbered card issued must be retained by the organization as a part of its daily records, and must not be otherwise used or disposed of by the organization. Any leftover cards not issued from the set must be accounted for by the organization.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-10. Floorworker sales report for receipting gross proceeds. The floorworker sales report receipting method is normally may be used by an organization to record the gross proceeds from the sale of paper bingo cards, by floorworkers, which are not accounted for by any other receipting method. A floorworker sales report must be controlled for each game receipted by this method completed by an employee or volunteer who is not a floorworker and the report shall must at least contain all the following information for each game; however, except for a "bonanza bingo" game, the information required by subsections 9 and 10 may be recorded for the bingo session:

1. Game number.
2. Floorworkers' names or assigned numbers.
3. Sales value of each card "single" and "packet".
4. Number of card "singles" and "packets" issued to each floorworker for sale, including legibly signing or initialing by each floorworker to evidence the issuance. However, if an organization sells several card "singles" to a player at a discount (for example, three "singles" for the price of two "singles"), the number of discounted sets must be

predetermined and separately accounted for when issued to the floorworker for sale.

5. Number of card "singles" and "packets" returned by each floorworker as unsold.
6. Number of card "singles" and "packets" sold by each floorworker computed as the difference between the number issued and returned.
7. Value of the number of card "singles" and "packets" sold by each floorworker computed as the sales value of each card "single" and "packet" multiplied by the number of card "singles" and "packets" sold.
8. Amount of cash turned in to the cashier by each floorworker, including legibly signing or initialing by each floorworker to evidence the amount.
9. Amount of cash long or short by each floorworker computed as the difference between the value of the number of card "singles" and "packets" sold (see subsection 7) and the cash turned in (see subsection 8) to the cashier.
10. Total number of card "singles" and "packets" issued, returned, and sold, and the total value of the number of card "singles" and "packets" sold total amount of cash turned in to the cashier, and total cash long or short.
11. The counts as required by this section must be done by both the floorworker and an employee or volunteer who is not a floorworker.
12. After the floorworker sales report is completed, the employee or volunteer who controlled the report shall legibly sign or initial and date this report.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-11. Use of checkers for recording gross proceeds. The checker receipting method is normally may be used by an organization that sells each bingo hard card or bingo paper card prior to the start of each individual bingo game and that does not record the bingo gross proceeds by any other receipting method. When using the checker system to account for bingo gross proceeds, at least one checker must be engaged for each bingo session.

1. A checker control report must be completed for each session by a checker who is not a floorworker and the report must contain at least the following information:
 - a. Game numbers.
 - b. Number of bingo card "singles" and "discounted singles" (for example, three "singles" for the price of two "singles") counted in play by each game number.
 - c. Sales value of each bingo card "single" and "discounted singles" by each game number.
 - d. Amount of actual gross proceeds computed as the total number of bingo card "singles" and "discounted singles" counted in play multiplied by the sales value of each bingo card "single" and "discounted singles" by each game number and totaled for the bingo session.
 - e. Certification by the checker that the report is correct, including the checker's legible signature and date.

2. A cashier receipting report must be completed for each session by a cashier who is not a floorworker and the report must contain at least the following information:
 - a. Game numbers.
 - b. Floorworkers' names.
 - c. Amount of cash turned in to the cashier by each game number.
 - d. Amount of prizes paid by the cashier by each game number.
 - ~~f.~~ e. Amount of total adjusted gross proceeds computed as the difference between the actual gross proceeds from the checker control report and the total amount of actual prizes from the prize register ~~(see section 10-04.1-06-12)~~.
 - ~~e.~~ f. Amount of actual cash profit for the bingo session computed as the total amount of cash turned in minus prizes paid by each game number and totaled for the bingo session on hand at the end of the bingo session, less the amounts of the starting cash bank, prizes paid by check that were not cashed at the site, and the actual cost of any merchandise prize previously paid by check.
 - g. Amount of cash long or short for the bingo session computed as the difference between the total amount of actual cash profit computed by subdivision e f of this subsection and the total adjusted gross proceeds computed

by subdivision ~~f~~ e of this subsection. Cash is short if the adjusted gross proceeds exceeds the actual cash profit. Any cash long or short must be explained in the organization's daily records.

- h. Certification by the cashier that the report is correct, including the cashier's legible signature and date.
3. The organization may be required to use a checker control report and a cashier receipting report that account for each bingo session's gross proceeds and cash long or short activity by ~~individual~~ floorworker if it is determined by the attorney general that the organization's bingo activity has resulted in abnormal cash shortages.
- ~~4. Written approval must be first obtained from the attorney general for use of a checker control report or a cashier receipting report, or both, which does not meet the requirements of this section but may contain adequate control features.~~

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-12. Register required for prizes.

1. All prizes issued in bingo games must be accounted for by the organization on a register at the time the prize is issued to each player winner.
2. ~~However, a prize register is not required if the organization uses checkers for recording gross proceeds (see section 10-04.1-06-11) when the total cash and merchandise prize values in aggregate for a session do not exceed three hundred dollars.~~

Each register for prizes must include The organization shall legibly print, in ink, at least the following information:

- a. Name of the gaming site.
- b. Date of the bingo session.
- c. Game number.
- d. Amount of the cash prize or a description and value of the merchandise prize won.
- e. Name and Full name, street address (if available) or rural route or post-office box number, city, state, and zip code

of the winner. However, if the organization makes a record of the win for this cash prize, the organization does not need to include the winner's street address, city, state, or zip code on the prize register.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-13. Record of the win.

- ~~1.~~ When any player wins a cash prize greater than one hundred dollars, the organization shall make a record of the win. However, the attorney general may require any organization to make a record of the win of any cash prize amount determined by the attorney general. The record of the win must be completed for the total cash prize payout regardless if the player intends to split the player's cash prize with another player. The record of the win must consist of a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt, and the check or receipt must include at least the following information:
- ~~2.~~ The check or receipt must include at least the information required on the prize register as prescribed by section ~~10-04.1-06-12.~~
- ~~3.~~ If the payee is actually known by the organization, the record of the win must include the payee's driver's license number.
1. The organization shall legibly print, in ink, on the face of the check or receipt at least the following:
 - a. Name of the gaming site.
 - b. Date of the bingo session.
 - c. Game number.
 - d. Amount of the cash prize.
 - e. Date of the cash prize payout if this date is different than the date of the bingo session.
 - f. Full name, street address (if available) or rural route or post-office box number, city, state, and zip code of the payee.
- ~~4.~~ g. If the payee is not known by the organization Unless the organization maintains current master records of player identification information, the record of the win must

include the payee's driver's license number, including state of license registration. The organization is responsible for the accuracy of the master records. This information must be identified by the organization directly from the payee's pictured driver's license. If the payee does not have a pictured driver's license, the organization ~~must~~ shall indicate the payee's full name ~~and correct address which will include the,~~ street address (if available) or rural route or post-office box number, city, ~~and~~ state, and zip code which must be taken from ~~another form~~ at least two other forms of identification. The organization shall determine the real identity of the payee and require such additional proof of identification from a reliable source as is necessary to properly establish the payee's identity. The organization may not pay out any prize unless and until the payee has fully and accurately furnished to the organization all information required by this section. If the payee does not have a pictured driver's license or at least two forms of identification, the organization shall mail the cash prize to the payee.

5. It is recommended that the organization also make a record of the win for cash prizes equal to one hundred dollars.

h. Legible signature or initials of the organization representative who completed the record of the win.

2. After the record of the win is completed by the organization, the payee shall legibly sign and date, in ink, the record of the win to acknowledge the cash prize amount.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-06-13.1. Person prohibited from falsifying the prize register or record of the win.

1. No gaming employee or volunteer or player may falsify any information of a prize register or record of the win. No gaming employee or volunteer may willfully or deliberately disregard the requirement of section 10-04.1-06-12 or 10-04.1-06-13 in completing the prize register or record of the win and intentionally or unintentionally through negligence of responsibility falsify or permit a player to falsify the prize register or record of the win when the exercise of reasonable care by the gaming employee or volunteer would have prevented or detected the player's falsification, including a player's conspiracy with another person to have the other person claim the cash prize. No

- player may knowingly or willfully provide or conspire with another person to provide false player identification information in deliberate disregard of the requirement of section 10-04.1-06-12 or 10-04.1-06-13. No player who has actually won a cash prize of any amount may through a fraudulent scheme have any other person claim the cash prize.
2. If the organization determines that a player has falsified, attempted to falsify, or conspired with another person to falsify the prize register or record of the win, the organization shall deny the player the cash prize and notify the attorney general or a local law enforcement agency.
 3. The organization may post a clear and legible notice in a conspicuous location at the gaming site to notify persons of the prohibition against attempts to falsify or falsifying the prize register or record of the win and warn of the consequences of violating this prohibition.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-06-13.2. Reconciliation of inventory control records of paper bingo cards.

1. The organization shall, on at least a quarterly basis, compare its inventory control records as described by subdivision e of subsection 2 of section 10-04.1-06-14, of paper bingo cards, including collated booklets, that are recorded as being unsold to paper bingo cards, including collated booklets, that are actually in inventory as unsold. The organization shall make a physical count and reconcile any difference. The reconciliation must be performed by a person who is independent of the person who has custody of the physical inventory of the paper bingo cards, including the site manager and gaming manager.
2. The organization shall document in writing that the reconciliation was performed. The documentation must include at least the following information:
 - a. Name and job position of the person who performed the reconciliation.
 - b. Date the reconciliation is conducted.
 - c. Procedure employed.
 - d. Result and corrective action taken.

e. Legible signature of the person who performed the reconciliation.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-06-14. Recordkeeping system required.

1. A licensed organization shall retain daily accounting records with regard to bingo games for a period of three years from the end of the quarter for in which the records are kept bingo activity occurred unless the organization is released by the attorney general from this requirement. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each bingo session:
 - a. The gross proceeds collected for each separate type of sale, of any kind, for bingo games including, but not limited to, regular games, early bird games, blackout games, or special games. These gross proceeds are to be supported by proper receipting records as required.
 - b. The amount paid out for cash prizes on and the actual cost of merchandise prizes for each bingo game supported by the organization's prize register or checker control report session.
 - c. Records documenting the starting and ending cash bank which shall on hand. Unless there is only one gaming employee or volunteer scheduled on duty, the count of the cash must be verified by at least two persons who shall sign or initial such and date that verification.
 - d. Records providing a A reconciliation, by site, (summary) of gross proceeds, prizes (cash and merchandise), adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
 - e. Inventory control records of paper bingo cards for maintaining accountability of the purchases and uses of such cards.:
 - (1) Master control records which must include for each primary color of cards and each type of collated booklets, at least the name of the distributor, sales invoice number and date of the purchase, quantity purchased, date received, date of issuance to a site, and site name.

(2) Site control records which must include for each primary color of cards and each type of collated booklets, at least the quantity received at a site, date received, site name, and quantity issued and returned during each bingo session according to the organization's receipting method used.

- f. Record of the win as required by section 10-04.1-06-13.
- g. The number of players in attendance, time the attendance count was taken, and a copy of the schedule of games and their prizes, ~~and the number and price of cards sold by type.~~

3. All daily records must be completed by use of a nonerasable ink pen and be legibly signed or initialed and dated by the person completing the record.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-06-15. Actual cash profit bank deposit required by licensed organizations. For bingo, the actual cash profit, less the increase or plus the decrease in the normal starting cash bank for the next session's activity, plus the amount of prizes paid by check that were not cashed at the site and the actual cost of any merchandise prizes previously paid by check, must be deposited intact in the organization's general gaming bank account no later than the fifth banking day following the day of the bingo session. If the organization prepares a deposit slip for the deposit of actual cash profit from only one bingo session, the validated bank deposit slip or receipt must contain a reference to bingo, date of the bingo session, deposit amount, and be included as part of the daily accounting records of that bingo session. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one bingo session or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-07-10 (raffles), 10-04.1-08-11 (charitable gaming tickets and punchboards), 10-04.1-09-04 (professional sports pools), 10-04.1-10-23 (twenty-one), ~~and~~ 10-04.1-10.1-25 (poker), and 10-04.1-10.2-06 (calcuttas). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-01. Raffles. A "raffle" is a game of chance in which the prize or prizes are won by one or more of numerous persons buying a raffle ticket or rafflewheel tickets. The winner or winners is determined by either drawing a ticket stub or other detachable section from a receptacle holding the ticket stubs or other detachable sections corresponding to all tickets sold or, use of a rafflewheel for a raffle involving rafflewheel tickets. A calendar raffle is a type of raffle in which the raffle ticket stub or other detachable section of the raffle ticket purchased by a player is entered in two or more raffle drawing occasions held on predetermined days over an extended period of time for predetermined prizes. The conduct of a raffle is the raffle drawing occasion.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-17

10-04.1-07-02. Raffle tickets - Limitations and requirements for use.

1. Tickets for entry into a raffle drawing must be sold separately and each constitutes a separate and equal chance to win with all other tickets sold. No person may be required to purchase more than one ticket, or to pay for anything other than the ticket, in order to enter any such raffle. An organization may sell several raffle tickets to a person at a discount (for example, three tickets for the price of two tickets); however, a discounted ticket must be specifically designated as a discounted ticket and the number of discounted tickets must be predetermined and separately issued and accounted for when issued to the ticket sellers for sale.
- 1.1. No organization may allow any raffle ticket seller to retain a raffle ticket for free or retain the value of a raffle ticket as consideration for the raffle ticket seller's sale of a certain quantity of tickets.
2. All tickets for use in any raffle must have a stub or other detachable section, be consecutively numbered, and be accounted for separately. ~~The~~ Except for the application of section 10-04.1-07-05.1, the ticket stub or other detachable section of the ticket must bear a duplicate number corresponding to the number on the ticket and must contain the purchaser's name, complete address, and telephone number. Both parts must be imprinted with sequential numbers.
3. Except as provided by subdivision d of subsection ~~3~~ 4 of North Dakota Century Code section 53-06.1-03, no organization may

sell raffle tickets on a site where a different eligible organization is licensed or is issued a local permit authorized to conduct games of chance.

4. No Except for the application of section 10-04.1-07-05.1, no person may be required to be present at a raffle drawing in order to be eligible for the prize drawing. A statement setting forth this condition must be set forth conspicuously on each raffle ticket and on all promotional material concerning the raffle.
5. In conducting a drawing in connection with any raffle, each ticket seller shall return to the organization the stub or other detachable section of all tickets sold. The organization shall then place each stub or other detachable section into a receptacle out of which the winning stubs or other detachable sections are to be drawn. Such receptacle must be designed so that each stub or other detachable section placed therein has an equal opportunity with every other stub or other detachable section to be the one withdrawn.
6. The organization shall return a player's purchase price of a raffle ticket to the player if the stub or other detachable section of the player's purchased ticket was not placed into the receptacle for the raffle drawing occasion.
7. No organization may conduct a calendar raffle for other than the fiscal year beginning July first and ending June thirtieth.
8. No organization may conduct any raffle drawing occasion, including a calendar raffle, unless at least two gaming employees or volunteers are present for the drawing. Both persons shall document the name of the winner in writing and sign and date the document attesting to the result of the raffle drawing occasion.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-02.1. Rafflewheel tickets - Limitations and requirements for use.

1. All rafflewheel tickets must be preprinted, detachable from the rafflewheel ticket card, and contain one or more numbers or symbols corresponding to the numbers or symbols on a rafflewheel. The one or more numbers or symbols printed on a rafflewheel ticket cannot be duplicated on any other rafflewheel ticket of the same rafflewheel ticket card number.

The rafflewheel ticket must bear a game serial number corresponding to the rafflewheel ticket card number.

2. The organization may not use rafflewheel tickets:
 - a. That do not have a state gaming stamp affixed to the flare of the series of rafflewheel ticket cards.
 - b. When the rafflewheel ticket card game serial number, written on the state gaming stamp, differs from the designated lowest numbered rafflewheel ticket card game serial number (see subsection 3 of section 10-04.1-14-18) in the series.
 - c. When the rafflewheel ticket card game serial number preprinted on the stub does not match the rafflewheel ticket game serial number preprinted on the card's rafflewheel tickets.
3. Tickets for entry into a rafflewheel ticket drawing must be sold separately and each constitutes a separate and equal chance to win with all other tickets sold. No person may be required to purchase more than one ticket, or to pay for anything other than the ticket, in order to enter any such raffle. All the tickets must be sold on the site and on the day of the rafflewheel ticket game.
4. ~~All~~ The organization may sell rafflewheel tickets for any price. However, all the rafflewheel tickets of a series of rafflewheel ticket cards must be sold for the same price. No organization may sell one or more rafflewheel tickets to a person at a discount (for example, three tickets for the price of two tickets).
5. All the rafflewheel tickets on a rafflewheel ticket card must be sold prior to the spinning of the rafflewheel. If all the rafflewheel tickets cannot be sold, the organization shall refund the gross proceeds to the players in exchange for the unplayed rafflewheel tickets.
6. The winner of a rafflewheel ticket game must always be determined by a spin of the rafflewheel.
 - 6.1. The organization may not have a direct interest in the outcome of the spin of the rafflewheel.
7. The organization may have multiple spins of the rafflewheel to award multiple prizes for one rafflewheel ticket card.
8. The rafflewheel must make at least four revolutions before stopping at the winning number or symbol. If four revolutions are not made, a nonspin must be declared and the rafflewheel must be spun again.

9. Cash or merchandise prizes, or both, can be awarded. No cash prize amount may be a variable multiple of the standard price of a rafflewheel ticket.
10. The winner of a rafflewheel ticket game is not required to be ~~immediately~~ present when the rafflewheel is spun in order to be eligible for the prize. However, the winner of a rafflewheel ticket game shall claim the winner's prize by redeeming the winning rafflewheel ticket on the day of the game. Otherwise, the organization may retain the prize or award it in another raffle.
11. All rafflewheel ticket cards of a series related to the same master flare must be reported on the gaming tax return in the quarter in which the series was first played. No organization may carry over a partial series of rafflewheel ticket cards into two or more quarters. Any rafflewheel ticket cards of a series which remain unplayed during a quarter when other rafflewheel ticket cards of that series were played must be retained by the organization as part of its daily records, and must not be otherwise used or disposed of by the organization.
12. The following rules must be posted in a clear, legible manner on the site:

RULES

A rafflewheel is used for selection of the winner.

All rafflewheel tickets of a card must be sold prior to spinning of the rafflewheel.

There may be multiple spins if the organization desires to award multiple prizes.

The rafflewheel must make at least four revolutions.

Cash or merchandise prizes may be awarded.

The winner is not required to be present when the rafflewheel is spun; however, the winner shall claim the prize on the day the prize is won.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-03. Raffle prizes prohibited.

1. No raffle prize may consist in whole or in part of any interest in real estate, ~~or of~~ tickets for entry into any

other raffle, or live animals (see North Dakota Century Code section 36-21.1-09).

2. Prizes for raffles may include any property which may be legally owned and possessed, ~~but may not include real estate~~. Cash prizes may be awarded in raffles conducted under this chapter provided ~~the value of no a single cash prize exceeds five hundred~~ does not exceed one thousand dollars, and provided further that no ~~eligible~~ organization may award cash prizes totaling more than ~~five hundred three thousand~~ dollars in the aggregate during any one day.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10.1, 53-06.1-17

10-04.1-07-04. ~~Control of raffle~~ Raffle merchandise prizes.

1. An organization conducting a raffle in which merchandise prizes are is to be awarded shall have paid for in full or otherwise become the owner, without lien or interest of others, of all such that merchandise prior to the drawing at which the winners of such those prizes are to be determined and must have written documentation evidencing the organization's ownership. However, the organization does not need to register or title items of personal property with the North Dakota department of transportation or North Dakota game and fish department. For example, automobiles, motorcycles, boats, and snowmobiles.
2. An organization may convert a raffle merchandise prize to a cash prize provided that the current retail price of a single merchandise prize does not exceed one thousand dollars and provided that the current retail price of the merchandise prize and the cash prizes of the raffle drawing occasion do not exceed three thousand dollars in the aggregate during one day.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-05. Disclosure of prizes and rules. Except for rafflewheel tickets and the application of section 10-04.1-07-05.1, the following information, at a minimum, must be clearly printed upon each raffle ticket prior to their being sold:

1. Name of organization.
2. Ticket number.

3. Price of the ticket. If the ticket is a discounted ticket, the discounted price ~~is necessary~~ must be printed.
4. If the ticket is a discounted ticket, the phrase "discounted ticket" must be conspicuously printed on each ticket.
5. Prize or prizes to be awarded or description of optional prizes selectable by a winning player.
6. Name of the licensing or authorizing authority.
7. License or city or county permit number.
8. A statement that the purchaser is not required to be present at the raffle drawing in order to win.
9. Date and approximate time of the drawing. However, if the raffle is a calendar raffle and the drawings are held on a standard day of the week or month, the dates of the drawings are not necessary; rather, the standard day of the week or month of the drawing is necessary. For a calendar raffle, the approximate time of the drawing must be printed.
10. Location of the drawing.
11. If applicable, a statement that the winner is liable for sales or use tax on a merchandise prize.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-05.1. Double admission tickets for a raffle. An organization may conduct a raffle by using double admission tickets to account for the actual gross proceeds for the sale of raffle tickets; provided, that all of the following requirements are met:

1. Double admission tickets (two single tickets printed together, side by side) must be used. One of the two tickets must be retained by the organization. The other ticket is retained by the player.
2. All tickets on a roll must be preprinted with a consecutive number. Each of the two double admission tickets must have the same number.
3. Each ticket of each separately colored roll must be valued at the same price for computing actual gross proceeds. No ticket may be sold at a discount.
4. Tickets must be sold consecutively off of a roll.

5. All the tickets for the raffle must be sold on the site and on the day of the raffle.
6. The winner shall claim the prize on the day of the raffle by redeeming the winning raffle ticket.
7. The organization shall record in its daily records, the color of the ticket, the selling value of the ticket, the lowest numbered ticket, and the highest numbered ticket sold from each separate roll of tickets used. Tickets sold and the value of prizes awarded for each day's raffle activity must be recorded separately. Any tickets left on the roll which will not be sold in any raffle must be retained by the organization as a part of its daily records and must not be otherwise used or disposed of by the organization.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-07-06. Prizes must be awarded.

1. All raffle prize winners must be determined on the date indicated on the raffle ticket unless a different date is requested in writing and approved by the attorney general. If a different date of the drawing is approved, the organization shall notify the purchasers of the raffle tickets of the change in the date either by contacting the purchasers individually or by making a public announcement. The attorney general may extend the date for the drawing if:
 - a. Weather has caused a postponement of the event at which the drawing was to occur; or
 - b. Not enough raffle tickets are sold to cover the cost of the prizes and an extension will make a material difference. The fact that a desired level of profit will not be attained is not a basis for an extension of the date of the drawing.
2. If a raffle prize remains unclaimed by the winner for thirty days following the date of the raffle drawing occasion and the organization has made a good faith effort to contact the winner for the redemption of the prize, the organization may retain the prize, have a second prize drawing, or award it in another game raffle.
3. This section does not apply to raffle activity of a series of rafflewheel ticket cards or use of double admission tickets.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-07-07. Reporting of raffle gross proceeds, prizes, adjusted gross proceeds, and expenses.

1. When the sales price of a raffle ticket relates partly to admission for a meal, dance, or other such activity, the organization shall deposit the gross proceeds into the general gaming bank account and allocate the gross proceeds between the gaming and nongaming activity in the following order:
 - a. An amount is allocated to the gaming activity to first recover the actual cost of the raffle prizes.
 - b. An amount not to exceed the actual cost of the nongaming activity is allocated to the nongaming activity.
 - c. The balance is allocated to the gaming activity.
2. When an organization conducts a raffle in which the raffle tickets are sold during one or more quarters and the raffle prize drawings occur in one quarter, the organization shall report that raffle's total actual gross proceeds, actual prizes, and actual adjusted gross proceeds in the one quarter in which the raffle prize drawings are held.
3. When an organization conducts a raffle in which the raffle tickets are sold during one or more quarters and the raffle prize drawings occur in more than one quarter, such as a calendar raffle, the organization shall report that raffle's total actual gross proceeds, actual prizes, actual adjusted gross proceeds, and expenses as follows:
 - a. Gross proceeds - Report the gross proceeds in the quarters in which the prize drawings are held. Gross proceeds must be computed as follows:
 - (1) Calculate the amount of actual gross proceeds received to date from the sale of raffle tickets for the present and all previous quarters. Multiply this amount by the ratio of the actual prizes that have been drawn in the present and all previous quarters to the total prizes to be drawn in all the quarters. Then, from this balance subtract the amount of actual gross proceeds reported in all previous quarters. The result is the amount of actual gross proceeds to be reported for the present quarter.

EXAMPLE:

QUARTER	VALUE OF TICKETS SOLD		VALUE OF PRIZES DRAWN	
	This Quarter	To Date	This Quarter	To Date
1	\$500	\$500	\$100	\$100
2	300	800	100	200
3	100	900	100	300
4	<u>0</u>	900	<u>500</u>	800
Totals	\$900		\$800	

QUARTER	GROSS PROCEEDS RECEIVED TO DATE	RATIO OF PRIZES DRAWN TO DATE	BALANCE	ACTUAL GROSS PROCEEDS		ACTUAL PRIZES	ACTUAL ADJUSTED GROSS PROCEEDS
				Previous Quarters	Present Quarter		
1	\$500	x (100/800) = \$ 62.50	- 0 = \$ 62.50			\$100.00	(\$ 37.50)
2	\$800	x (200/800) = \$200.00	- 62.50 = 137.50			100.00	37.50
3	\$900	x (300/800) = \$337.50	- 200.00 = 137.50			100.00	37.50
4	\$900	x (800/800) = \$900.00	- 337.50 = <u>562.50</u>			<u>500.00</u>	<u>62.50</u>
Totals				\$900.00		\$800.00	\$100.00

b. Prizes - Report the prizes in the quarters in which the prize drawings are held. The actual prizes reported for a quarter is the dollar value of all prizes drawn during that quarter.

c. Adjusted gross proceeds - ~~Report the adjusted gross proceeds in the quarters in which the prize drawings are held.~~ The actual adjusted gross proceeds reported for a quarter is calculated as the amount of actual gross proceeds minus actual prizes.

d. Expenses - Report the expenses in the quarters in which the prize drawings are held or when the expenses are paid.
Expenses If the expenses are reported in the quarters in which the prize drawings are held, the expenses must be computed as follows:

- (1) Calculate the amount of expenses incurred to date for the present and all previous quarters. Multiply this amount by the ratio of the actual prizes that have been drawn in the present and all previous quarters to the total prizes to be drawn in all the quarters. Then, from this balance subtract the amount of expenses reported in all previous quarters. The result is the amount of expenses to be reported for the present quarter.

EXAMPLE:

QUARTER	EXPENSES		VALUE OF PRIZES DRAWN	
	This Quarter	To Date	This Quarter	To Date
1	\$400	\$400	\$100	\$100
2	100	500	100	200
3	50	550	100	300
4	<u>0</u>	550	<u>500</u>	800
Totals	\$550		\$800	

QUARTER	EXPENSES TO DATE	RATIO OF PRIZES DRAWN TO DATE	BALANCE	EXPENSES	
				Previous Quarters	Present Quarter
1	\$400	x (100/800) =	\$ 25.00	- 0	= \$ 25.00
2	\$500	x (200/800) =	\$125.00	- 25.00	= 100.00
3	\$550	x (300/800) =	\$206.25	- 125.00	= 81.25
4	\$550	x (800/800) =	\$550.00	- 206.25	= <u>343.75</u>
Total					\$550.00

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-07.1. Register required for prizes.

1. All prizes issued in a raffle drawing occasion, including a series of rafflewheel ticket cards, must be accounted for by the organization on a register at the time the prize is issued to each winner.
2. The organization shall legibly print, in ink, at least the following information:
 - a. Name of the gaming site.
 - b. Date of the raffle drawing occasion.
 - c. Winning raffle ticket number.
 - d. Amount of the cash prize or a description and value of the merchandise prize.

e. Full name, street address (if available) or rural route or post-office box number, city, state, and zip code of the winner. However, if the organization makes a record of the win for a cash prize, the organization does not need to include the winner's street address, city, state, or zip code on the prize register.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-07-08. Record of the win.

~~f.~~ When any player wins a cash prize greater than one hundred dollars, the organization shall make a record of the win. However, the attorney general may require any organization to make a record of the win of any cash prize amount determined by the attorney general. The record of the win must be completed for the total cash prize payout regardless if the player intends to split the player's cash prize with another player. The record of the win must consist of a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt and the check or receipt must include at least the following information:

1. The organization shall legibly print, in ink, on the face of the check or receipt at least the following:

a. Name of the gaming site.

b. Date of the raffle drawing.

~~b.~~ c. Amount of the cash prize won.

d. Date of the cash prize payout if this date is different than the date of the raffle drawing.

~~c.~~ e. Winning raffle ticket number.

~~d.~~ f. ~~Name and~~ Full name, street address (if available) or rural route or post-office box number, city, state, and zip code of the ~~winner~~ payee.

~~e.~~ g. ~~Driver's~~ Unless the organization maintains current master records of player identification information, the record of the win must include the payee's driver's license number, including state of license registration. The organization is responsible for the accuracy of the master records. This information must be identified by the organization directly from the payee's pictured driver's license. If the payee does not have a pictured driver's license, the organization shall indicate the payee's full

name, and correct address which will include the, street address (if available) or rural route or post-office box number, city, and state, and zip code which must be taken from another form at least two other forms of identification. The organization shall determine the real identity of the payee and require such additional proof of identification from a reliable source as is necessary to properly establish the payee's identity. The organization may not pay out any prize unless and until the payee has fully and accurately furnished to the organization all information required by this section. If the payee does not have a pictured driver's license or at least two forms of identification, the organization shall mail the cash prize to the payee.

h. Legible signature of the organization representative who completed the record of the win.

2. It is recommended that the organization also make a record of the win for cash prizes equal to one hundred dollars. After the record of the win is completed by the organization and unless the payee lives in a city different than the city of the gaming site, the payee shall legibly sign and date, in ink, the record of the win to acknowledge the cash prize amount.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-07-08.1. Person prohibited from falsifying the prize register or record of the win.

1. No gaming employee or volunteer or player may falsify any information of a prize register or record of the win. No gaming employee or volunteer may willfully or deliberately disregard the requirements of section 10-04.1-07-07.1 or 10-04.1-07-08 in completing the prize register or record of the win and intentionally or unintentionally through negligence of responsibility falsify or permit a player to falsify the prize register or record of the win when the exercise of reasonable care by the gaming employee or volunteer would have prevented or detected the player's falsification, including a player's conspiracy with another person to have the other person claim the cash prize. No player may knowingly or willfully provide or conspire with another person to provide false player identification information in deliberate disregard of the requirements of section 10-04.1-07-07.1 or 10-04.1-07-08. No player who has actually won a cash prize of an amount requiring a prize

register or record of the win may through a fraudulent scheme have any other person claim the cash prize.

2. If the organization determines that a player has falsified, attempted to falsify, or conspired with another person to falsify the prize register or record of the win, the organization shall deny the player the cash prize and notify the attorney general or a local law enforcement agency.
3. The organization may post a clear and legible notice in a conspicuous location at the gaming site to notify persons of the prohibition against attempts to falsify or falsifying the prize register or record of the win and warn of the consequences of violating this prohibition.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-07-08.2. Reconciliation of inventory control records.

1. The organization shall, on at least a quarterly basis, compare its inventory control records, as described by paragraph 3 of subdivision j of subsection 2 of section 10-04.1-07-09, of series of rafflewheel tickets that are recorded as being in play and unplayed to series of rafflewheel tickets that are actually in play and actually in inventory as unplayed. The organization shall reconcile any difference. The reconciliation must be performed by a person who is independent of the person who has custody of the physical inventory of the series of rafflewheel tickets, including the site manager and gaming manager.
2. The organization shall document in writing that the reconciliation was performed. The documentation must include at least the following information:
 - a. Name and job position of the person who performed the reconciliation.
 - b. Date the reconciliation was conducted.
 - c. Procedure employed.
 - d. Result and corrective action taken.
 - e. Signature of the person who performed the reconciliation.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-07-09. Recordkeeping system required.

1. ~~A~~ Except as provided by subdivision f of subsection 2 and by paragraph 1 of subdivision j of subsection 2, a licensed organization shall retain daily accounting records with regard to raffles for a period of three years from the end of the quarter for in which the records are kept raffle activity occurred unless the organization is released by the attorney general from this requirement. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each raffle drawing occasion conducted:
 - a. Records documenting the ~~distribution~~ issuance of single and discounted raffle tickets for selling, including the, including dates, ticket seller's name and the, quantity issued, range of raffle ticket numbers on the raffle tickets issued to that the seller, and quantity sold.
 - b. Records providing a reconciliation of the actual cash received from each ticket seller based on the number of raffle tickets sold, including discounted tickets.
 - c. Records providing sufficient detail to determine the cost of the prizes awarded.
 - d. Records providing a schedule of bank deposits for the raffle ticket sales.
 - e. A sample of the printed raffle ticket.
 - f. The ticket stubs of all sold tickets which must be retained by the organization for one year from the end of the quarter in which the raffle activity occurred.
 - g. Record of the win as required by section 10-04.1-07-08.
 - h. ~~Records providing a~~ A reconciliation, by site, (summary) of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
 - i. Inventory control records of double admission tickets must list the date each roll of tickets is purchased or obtained by the organization, color of the ticket, selling value of each ticket, beginning ticket number, ending ticket number, and number of tickets on that roll. All ticket rolls received must be entered in the log upon being received.
 - j. For a series of rafflewheel ticket cards:

- (1) The flare, with the state gaming stamp affixed, together with all ~~unplayed and~~ unsold rafflewheel ticket cards. The flare and the unsold rafflewheel ticket cards must be retained by the organization for one year from the end of the quarter in which the rafflewheel activity occurred.
 - (2) Records documenting the daily starting and ending cash on hand. ~~It is recommended that~~ Unless there is only one gaming employee or volunteer scheduled on duty, the count of the cash must be verified by at least two persons who shall sign or initial ~~such~~ and date that verification.
 - (3) Inventory control records ~~documenting the purchases, issuances~~ must include at least the sales invoice number and date, date received, dates of issuance to and from a site, ~~playings, reportings on the site~~ name, quarter gaming tax return on which reported, and ~~disposals of games~~ date and method of disposal for each series, by gaming stamp number and game serial number. Unless a class B organization has only one site which is the location of the organization's home office, the class B organization shall maintain inventory control records at each site and the records must include, for each series of rafflewheel ticket cards, at least the dates received from and returned to the home office, by gaming stamp number and game serial number.
 - (4) Records documenting the gaming stamp number, game serial number, lowest and highest numbered rafflewheel ticket card numbers, type of rafflewheel ticket [for example, 40 x 3 x 120 (forty rafflewheel tickets to each rafflewheel ticket card, three numbers on each rafflewheel ticket, and one hundred twenty numbers on the rafflewheel)], and cost per play.
 - (5) For each rafflewheel ticket card number, date played, winning rafflewheel ticket number, cash prize amount or description and actual cost of the merchandise prize.
 - (6) A reconciliation (summary) of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long and short, and bank deposit.
3. All daily activity records must be completed by use of a nonerasable ink pen, be readily available at the site until the raffle drawing occasion is concluded or the series of rafflewheel tickets is closed, and be legibly signed or initialed and dated by the person completing the record.

4. Unless the gaming activity of a closed series of rafflewheel tickets is summarized by a person who is independent of any person who was directly or indirectly involved in operating the series of rafflewheel tickets while the series was in play, including the site manager and gaming manager, the summarization must be audited by a person who is independent of the person who summarized the closed series of rafflewheel tickets. If there is any variance between the summarization and audit, the person who audited the series of rafflewheel tickets shall notify the gaming manager or other appropriate organization representative of the variance.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-07-10. Actual cash profit bank deposit required by licensed organizations. For a raffle, the actual cash profit, plus the amount of prizes paid by check that were not cashed at the site and the actual cost of any merchandise prizes previously paid by check, must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day of the raffle drawing. If the organization prepares a deposit slip for the deposit of actual cash profit from only one raffle drawing occasion, the validated bank deposit slip or receipt must contain a reference to a raffle, date of the raffle drawing occasion, deposit amount, include the respective state gaming stamp number of the series of rafflewheel ticket cards, and must be included as part of the accounting records of that raffle drawing occasion. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one raffle drawing occasion or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-06-15 (bingo), 10-04.1-08-11 (charitable gaming tickets and punchboards), 10-04.1-09-04 (professional sports pools), 10-04.1-10-23 (twenty-one), ~~and~~ 10-04.1-10.1-25 (poker), and 10-04.1-10.2-06 (calcuttas). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-01. Charitable gaming ticket and punchboard.

1. A "charitable gaming ticket" is a single-folded (jar ticket) or banded ticket (jar ticket) or is a two-ply card with perforated break-open tabs (pull tab), the face of which is initially covered or otherwise hidden from view to conceal a number, symbol, or set of symbols, some of which numbers or symbols out of every deal have been designated in advance and at random as prize winners. A player buys a charitable gaming ticket from the licensed organization and opens it to determine if the charitable gaming ticket is an instant winner or a potential winner if the game includes the use of a seal such as club specials and tip boards which may then require the player to sign the player's name on numbered lines provided. The player with a winning charitable gaming ticket, or numbered line, receives the prize stated on the flare from the licensed organization. The prize must be clearly and fully described on the flare. The maximum price per charitable gaming ticket cannot exceed two dollars. Only cash prizes can be awarded. For deals of charitable gaming tickets, the maximum cash prize is five hundred dollars. ~~For deals of club specials and tip boards, the maximum seal prize value is one hundred dollars cash.~~

A club special is a placard that is used with charitable gaming tickets which contain concealed numbers. The tickets are contained in a receptacle while the game is in play. When a ticket is purchased and opened, players having tickets with certain predesignated numbers printed on the flare can sign the placard at the line indicated by the number on the ticket. When the predesignated numbers are all purchased, a seal is removed to reveal a number indicating which of the predesignated numbers is the winning number. The player whose line number corresponds to the winning number that was concealed by the seal wins the seal prize value. A club special may also contain consolation winners which do not need to be determined by the use of a seal. The maximum price for a stapled set of jar tickets cannot exceed one dollar. Cash or merchandise prizes can be awarded. The maximum number of stapled sets in the deal cannot exceed two hundred. The maximum seal prize value, including the current retail price of a merchandise prize, is fifty dollars. If a merchandise prize is awarded, there must be placed conspicuously on the club special the following information which must be completed by the organization:

RETAIL VALUE OF PRIZE \$

A "tip board" is a placard to which is attached jar tickets, arranged in columns or rows. The jar tickets contain concealed numbers. When a jar ticket is purchased and opened, players having jar tickets with certain predesignated numbers can sign the placard at the line indicated by the number on the jar ticket. When the predesignated numbers are all purchased, a seal is removed to reveal a number indicating

which of the predesignated numbers is the winning number. A tip board may also contain consolation winners which do not need to be determined by the use of a seal. The maximum price per jar ticket cannot exceed one dollar. Cash or merchandise prizes can be awarded. The maximum number of tickets in the deal cannot exceed two hundred. The maximum seal prize value, including the current retail price of a merchandise prize, is fifty dollars. If a merchandise prize is awarded, there must be placed conspicuously on the tip board the following information which must be completed by the organization:

RETAIL VALUE OF PRIZE \$ _____

A seal board ~~is a deal which~~ is a card placard consisting of horizontal lines arranged in a column. Numbers are assigned consecutively to each of the lines. A seal conceals a number which has been designated in advance and at random as the prize winner. A player buys a "line" from the licensed organization and writes the player's name on it. When the seal is removed, if the player's line number corresponds to the winning number that was concealed by the seal, the player receives the prize stated on the flare (seal board) from the licensed organization. The prize must be clearly and fully described. The maximum price per line cannot exceed two dollars. ~~Only~~ Cash or merchandise prizes can be awarded. For a seal board, the The maximum seal cash prize value is one hundred dollars. The maximum seal merchandise prize value, at current retail price, is one five hundred dollars. There If a merchandise prize is awarded, there must be placed conspicuously on the seal board the following information which must be completed by the organization:

COST PER PLAY \$ _____

RETAIL VALUE OF PRIZE \$ _____

2. A "punchboard" may be either a paper-type or electronic punchboard.
 - a. A paper-type punchboard is a board or device containing a number of holes or receptacles of uniform size in which are placed mechanically and at random serially numbered slips of paper which may be punched or drawn from said hole or receptacle. A player upon payment of a consideration, may punch or draw ~~such~~ those numbered slips of paper from ~~such~~ those holes or receptacles and obtain the prize stated on the flare if the number drawn corresponds to a winning number or a potential winning number if the paper-type punchboard includes the use of a seal. The player would redeem a winning punch with the jar operator for the prize stated on the flare. No paper-type punchboard may be taken out of play once ~~such~~ that paper-type punchboard has been offered for sale

unless all of the highest denomination of winners have been redeemed or chances for all the highest denomination of winners have been sold. However, if a paper-type punchboard has been in play for at least ninety days and all of the highest denomination of winners have not been redeemed or chances for all the highest denomination of winners have not been sold, the paper-type punchboard may be taken out of play only if written approval is first obtained from the attorney general. For purposes of this section, a last sale feature may not be considered one of the highest denomination of winners if it is of equal value. The value of the last sale may not exceed the value of the highest denomination of winners. The maximum price per punch cannot exceed two dollars. Cash or merchandise prizes can be awarded. The maximum cash prize is five hundred dollars. If a merchandise prize is awarded, there must be placed conspicuously on the punchboard the following information which must be completed by the organization:

RETAIL VALUE OF PRIZE \$

- b. An electronic punchboard is a computerized device containing a replaceable punchcard placed over a permanent underlying matrix board of holes and a keyboard. The punchcard aligns and corresponds with a number of holes in the underlying matrix board. Hidden randomly within the matrix are several winners which may be of various prize denominations. A player upon payment of consideration, may press a peg through a hole in the punchcard, piercing the sheet of paper, and contact a position on the keyboard. The electronic punchboard will then compare the played position with the precomputed matrix of winner positions and determine if the play is a winner. If the play is not a winner, a ticket is printed by an internal printer indicating the number of unplayed holes remaining in the game. If the play is a winner, a winning ticket is printed by an internal printer which indicates a win designation, prize value, game serial number, and a customized security code. The player would redeem a winning ticket with the jar operator for the prize stated on the ticket and punchcard. No punchcard may be taken out of play once ~~such~~ the punchcard has been offered for sale unless all of the highest denomination of winners have been redeemed or chances for all the highest denomination of winners have been sold. However, if a punchcard has been in play for at least ninety days and all of the highest denomination of winners have not been redeemed or chances for all the highest denomination of winners have not been sold, the punchcard may be taken out of play only if written approval is first obtained from the attorney general. **For purposes of this section, a A** last sale feature may not be considered one of the highest

denomination of winners if it is of equal value. The value of the last sale may not exceed the value of the highest denomination of winners. The maximum price per punch cannot exceed two dollars. Cash or merchandise prizes can be awarded. The maximum cash prize is five hundred dollars.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-08, 53-06.1-08.1, 53-06.1-17

10-04.1-08-02. Single game.

1. For all single deal games, the flare, with the state gaming stamp attached, for the deal of charitable gaming tickets in play, must be affixed to the receptacle containing that deal of charitable gaming tickets. If a coin-operated dispensing device is used, the flare must be affixed to the device in a manner that it cannot be easily removed by a player.
2. No single deal of charitable gaming tickets, including club specials and tip boards, may be taken out of play once such deal has been offered for sale unless all the highest denomination of winners have been redeemed or all chances have been sold. However, if a single deal of charitable gaming tickets, including club specials and tip boards, has been in play for at least ninety days and all of the highest denomination of winners have not been redeemed or all chances have not been sold, the deal may be taken out of play only if written approval is first obtained from the attorney general. For purposes of this section, a last sale feature may not be considered one of the highest denomination of winners if it is of equal value. The value of the last sale may not exceed the value of the highest denomination of winners. Repealed effective June 1, 1990.

History: Effective November 1, 1986; amended effective October 1, 1987.

General Authority: ~~NDCC 53-06.1-17~~

Law Implemented: ~~NDCC 53-06.1-17~~

10-04.1-08-02.1. Excise tax. The two percent excise tax on gross proceeds of charitable gaming tickets must be included as part of each charitable gaming ticket's cost per play. For pull tab games, the cost per play must be the amount preprinted on the charitable gaming ticket by the manufacturer. For jar ticket games, the cost per play must be the amount preprinted on the game's flare by the distributor.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-17

10-04.1-08-03. Commingled game Conduct and play.

1. Effective July 1, 1990, deals of charitable gaming tickets, excluding club specials, tip boards, and seal boards must be conducted and played through a commingled method only.
2. Deals of charitable gaming tickets ~~may~~ must be commingled in ~~one~~ a receptacle, including a coin-operated dispensing device, subject to all of the following provisions:
 - a. Two or more deals are placed in play and must be thoroughly intermixed at the same time at the start of a commingled game. Deals When a predetermined minimum number or minimum range of numbers of winning charitable gaming tickets, through a certain level of denomination selected by the organization, remain in the game as unredeemed, and additional deal is added to the game. When a deal is added to the commingled game, the charitable gaming tickets must be thoroughly intermixed in the receptacle with the deals in play, and no tickets may be sold to any player until after this mixing has occurred. The organization may use a supplemental mixing container to thoroughly mix the tickets. Also, except for the application of subsection 18, when a deal is added to the commingled game and when the organization closes the commingled game, an accounting must be done of the winning charitable gaming tickets redeemed since the immediate previous deal was added to the commingled game (see subdivision c of subsection 2 of section 10-04.1-08-10).
 - b. If a gaming site's total gross proceeds of charitable gaming tickets for the previous fiscal year, for which gaming tax returns were filed, was fifty thousand dollars or less, the organization may close a commingled game at the organization's discretion. No more deals need to be added to the initial two or more deals placed in play. If an organization did not file gaming tax returns for the previous fiscal year, the organization shall comply with subdivision c of this subsection. The commingled game must be closed at least at the end of each quarter.
 - c. If a gaming site's total gross proceeds of charitable gaming tickets for the previous fiscal year, for which gaming tax returns were filed, was greater than fifty thousand dollars or the organization did not file a gaming tax return for the previous fiscal year, the organization may not close a commingled game unless at least one hundred deals have been added to that commingled game, that commingled game has been in play for at least twenty-five calendar days, or the attorney general authorizes closure of that commingled game due to security reasons. However, regardless of the number of deals added to a commingled game, the organization shall close the

commingled game at least at the end of each quarter or within five days prior to the end of each quarter.

- ~~b-~~ d. The deals are identical as to a particular type, name of game, and number of charitable gaming tickets.
- e. Each deal must be manufactured with at least two highest denomination winning charitable gaming tickets.
- ~~c-~~ f. Only the flare of one deal of a commingled game may have a last sale prize feature.
- ~~d-~~ g. Each deal is identified by its own flare displaying the state gaming stamp and game serial number.
- ~~e-~~ h. The flares applicable to each deal are identical as to:
 - (1) Name of game.
 - (2) Price per ticket.
 - ~~(2)~~ (3) Amount Number of prizes except for the one deal that may have a last sale feature.
 - ~~(3)~~ (4) Denominations of prizes.
 - (5) Winning number, symbol, or set of symbols.
- ~~f-~~ i. The flares flare for all the deals inserted for which any charitable gaming tickets remain at least one deal of a commingled game in play must be displayed in the immediate vicinity so that the state gaming stamp with the game serial number is readily available winning number, symbol, or set of symbols and denomination of prizes are easily visible to the players. However, in lieu of displaying at least one flare, the organization may display a master flare which must include all the information of an original flare. If a flare for at least one deal or a master flare is used, the organization shall retain all the original flares on the site so these flares are readily available to the attorney general and law enforcement officials. If a deal of a commingled game has a last sale prize feature, the flare of that deal must also be displayed. The organization shall display the master flare or original flare in a manner so the flare is not easily removable by a player. If a coin-operated dispensing device is used, the master flare or original flare must be affixed to the device in a manner that it cannot be easily removed by a player.
- j. The primary color of the charitable gaming tickets of all the deals of a commingled game must be the same. If the deals of a commingled game involve folded or banded jar

tickets, the primary color of the band of the tickets of all the deals in a commingled game must be the same.

k. Except for a deal's game serial number, the charitable gaming tickets of the deals of a commingled game have no visual differences.

- ~~2-~~ 3. The commingled game is placed into play and removed from play either at least at the end of each quarter when one hundred twenty or less deals in the aggregate have been placed in play during the quarter in one or more commingled games at a site; or at least at the end of each month when more than one hundred twenty deals in the aggregate have been placed in play during the quarter in one or more commingled games at a site. The reporting of the results of the commingled game must be made in reported on the same quarter period gaming tax return for the quarter in which the commingled game was closed.
- ~~3-~~ 4. The organization is prohibited from putting into play conducting commingled games of charitable gaming tickets if it is determined by the attorney general that such that play has resulted in abnormal cash shortages for that organization.
5. The receptacle used must be designed to prohibit players from easily accessing the tickets.
6. The receptacle containing a commingled game must be located on top of a stationary or mobile jar bar, or in a conspicuous place by the jar bar visible to all players while the game is actually in play.
7. No organization may modify or otherwise change the flare, including a last sale feature, related to a deal or punchboard once the deal or punchboard has been received from a distributor, or use a flare that was received in an altered or defaced condition.
8. No organization may take off a deal's manufacturer's cellophane shrink wrap or break the manufacturer's or distributor's (if applicable) permanent adhesive seal on a deal of charitable gaming tickets' package, box, bag, or other container until the deal is placed in a mixing container or a receptacle for sale.
9. No deal may be placed in play in the original packages, boxes, bags, or other containers in which it was received from the distributor.
10. When a deal is received from the distributor in two or more packages, boxes, bags, or other containers, all of the deal's charitable gaming tickets from the respective packages, boxes, bags, or other containers must be placed in play at the same time and in the same receptacle.

11. No organization may permit the display or operation of any deal or punchboard which may have in any manner been marked, defaced, tampered with or otherwise placed in a condition, or operated in a manner, which may deceive the public or which affects the chances of winning or losing upon the taking of any chance thereon.
12. No deal or punchboard may be placed in play unless the cost for each charitable gaming ticket or punchboard punch is clearly posted on the flare.
13. No charitable gaming ticket or punchboard punch may be sold for a price different than the price stated on the deal's or punchboard's flare.
14. No deal or punchboard may be placed in play when the value of the prizes to be awarded by the organization differs from the flare as received from the distributor.
15. The organization shall conspicuously post a notice on the site containing certain administrative rules and organization policies related to the conduct of deals and punchboards. The notice must be clear and legible, and posted at a location that is easily visible to the players. The rules and policies must at least include:
 - a. Freezing (restricting the play of a game to one player or a group of players) is prohibited.
 - b. Monetary limits, if any, on check writing.
 - c. Last sale feature prize payout when two or more players desire to purchase the last charitable gaming ticket of a game.
 - d. Time limits on player redemptions of winning charitable gaming tickets (subsection 17).
 - e. The information, if any, authorized by subdivisions a and b of subsection 19, that the organization is providing to all players. The organization shall post the specific information on a notice at the jar bar so that each player has an equal opportunity to read that information without having to ask the jar operator for the information.
 - f. A notice stating "Soliciting, providing, or receiving any inside information, by any person, by any means whatsoever, about games of charitable gaming tickets is a class C felony punishable by a five thousand dollar fine or five years in jail or both".
 - g. The number of tickets that two or more active players may purchase when a game is being closed (see subsection 20).

16. No organization, gaming employee, or volunteer may provide any inside information to any person and no person may solicit or willfully receive any inside information, by any means whatsoever, related to a commingled game of charitable gaming tickets, club special, tip board, seal board, or punchboard. The charge for providing, soliciting, or receiving inside information is a class C felony.
17. The organization shall establish a posted written policy that requires a player to redeem a winning charitable gaming ticket within a maximum time limit of fifteen minutes from the time the charitable gaming ticket was purchased by the player. The organization shall, if possible, retain and void a winning charitable gaming ticket redeemed by a player after the time limit provided by this subsection. No other player may redeem this ticket. The jar operator may not pay a prize to any player who is redeeming a winning charitable gaming ticket after the time limit set by this policy.
18. The organization may, at its discretion, add a deal to a commingled game if the organization suspects that a player is intentionally not redeeming winning charitable gaming tickets or if the play of the commingled game is inactive.
19. No organization, gaming employee, or volunteer may provide any inside information to any person and no person may solicit or willfully receive any inside information, by any means whatsoever, except for the information referenced by either subdivision a or b, or both, of this subsection which may be provided for a commingled game unless the organization closes a commingled game (see subsection 35). If the organization provides this information, this special policy must be posted in accordance with subsection 15:
- a. The minimum number or a minimum range of numbers of winning charitable gaming tickets, through a certain level of denomination selected by the organization, that remain in the game as unredeemed. This minimum number or minimum range of numbers may be by denomination or in the aggregate and is usually used by the organization as an indicator for adding a deal to the game. For example, when the number of unredeemed winning charitable gaming tickets as referenced by subdivision b of this subsection equals the minimum number or minimum range of numbers of unredeemed charitable gaming tickets referenced by this subdivision, a deal is usually added to the game.
- b. The number of winning charitable gaming tickets, through a certain level of denomination selected by the organization, remaining in the game as unredeemed. This number must be posted for each denomination of unredeemed winning charitable gaming tickets that is within the level of denomination selected by the organization. No

organization may guarantee the accuracy of this information. The organization shall post a sign in accordance with subsection 15 that essentially states that the posted number of unredeemed winning tickets, by denomination, is correct to the best of the organization's knowledge - it is not guaranteed.

20. No jar operator may sell more than two hundred fifty charitable gaming tickets to any player at one time and may not sell additional tickets to that player until the player has first opened the tickets previously purchased. However, if a player redeems a winning charitable gaming ticket that has a prize value in excess of two hundred fifty dollars, the jar operator may sell the player a quantity of tickets that equals the prize value of the player's winning ticket. The organization may, at its discretion, limit a player's purchase of tickets to a quantity less than two hundred fifty tickets, especially when two or more players are actively playing the game and the organization is closing the game.
21. No jar operator may unilaterally or in collusion with another person selectively chose certain charitable gaming tickets from the receptacle based on the tickets' game serial number for any player. The jar operator shall take a handful of tickets, approximately equal to the number of tickets being purchased by the player, from the receptacle, lay the tickets on top of the jar bar, and count off the number of tickets purchased as a block. The jar operator shall repeat this process if additional tickets are needed for the player. If there are any excess tickets and that player declines to purchase them, the jar operator shall return those excess tickets to the receptacle. A violation of this subsection constitutes providing of inside information.
- 21.1. In applying subsection 3 of North Dakota Century Code section 53-06.1-16.1, the phrase "to willfully use any fraudulent scheme or technique" includes an intentional act by a gaming employee or volunteer to segregate, by any method, charitable gaming tickets of a deal initially placed in play or added to a commingled game from the other charitable gaming tickets in that commingled game. If a gaming employee or volunteer does not thoroughly intermix charitable gaming tickets of deals of a commingled game as required by subdivision a of subsection 2 of section 10-04.1-08-03, it is a violation of subsection 3 of North Dakota Century Code section 53-06.1-16.1.
22. If the attorney general believes that an organization is providing inside information based on substantiated allegations, gaming employee or volunteer information, or information from local law enforcement officials, the attorney general may impose additional restrictions on the organization's conduct of commingled games to include:

- a. Closed circuit video surveillance system of all jar operator transactions.
 - b. Any or all of the following: require the record of the win to be a two-part form, maintenance of a master file, or filing of a record of the win detail report prescribed by the attorney general.
 - c. Prohibiting the organization from providing players with the information allowed by subdivisions a and b of subsection 19.
 - d. Prohibit tipping, require pooling of tips, or require a tip report to be filed.
 - e. Require for each commingled game in which a record of the win is created for cash prizes, except for a last sale feature, records documenting the following information for whenever a deal is added to the commingled game and for when the last shift ends for each day:
 - (1) The actual cash profit for the period since the immediate previous deal was added to the commingled game.
 - (2) The specific number of charitable gaming tickets redeemed for prizes, by each denomination of prize, since the immediate previous deal was added to the commingled game.
23. No jar operator may permit any player to physically handpick any charitable gaming ticket from a receptacle.
24. No organization may freeze a game for any player or group of players. The organization shall allow all bona fide players to play games of charitable gaming tickets.
25. No employee or volunteer may assist players in the opening of purchased charitable gaming tickets except in the assistance of a handicapped player.
26. No jar operator may knowingly pay a prize to any player who is redeeming a winning charitable gaming ticket that has in any manner been marked, defaced, tampered with, or otherwise placed in a condition which may deceive the organization. However, this subsection does not apply if the jar operator is participating in a law enforcement investigation.
27. No jar operator may knowingly pay a prize to any player who is redeeming a winning charitable gaming ticket when that player has left the physical area of the gaming site where the game is in play.

28. If a player purchases a stapled set of jar tickets (for example, four jar tickets stapled as one set) and the player, either before or after opening any of the jar tickets of that set, determines that the stapled set is defective because less than the standard number of jar tickets are stapled as one set, the organization may only issue the player the number of jar tickets actually missing from the set. The organization shall randomly select an existing unstapled jar ticket or remove the staple from a randomly selected stapled set for issuing a single jar ticket to the player. However, as an alternative the organization may, at its discretion, exchange the defective set of jar tickets with a new set. If the organization applies this alternative and exchanges an opened, partially opened, or unopened stapled set of jar tickets for a new set, none of the opened or unopened jar tickets on the exchanged partial set may be accounted for as unsold or defective and therefore the organization shall absorb the related cash short when the game's activity is reported on the gaming tax return (see subsection 9 of section 10-04.1-05-07). The organization may sell an unstapled jar ticket at a proportional selling price of a stapled set of jar tickets. For example, if the standard number of jar tickets in a stapled set is four and this set sells for one dollar, a single jar ticket is to be sold for twenty-five cents.
29. The jar operator shall deface the winning number, symbol, or set of symbols of each winning charitable gaming ticket when it is redeemed, regardless of the ticket's denomination.
30. An organization may continue a game in play regardless if all of the game's major and consolation winning charitable gaming tickets have been redeemed.
31. If the organization closes a commingled game of charitable gaming tickets which has tickets remaining as unsold, the organization may not place these unsold tickets back into play.
32. No organization or jar operator may unilaterally withhold any tip from a player's cash prize when the player redeems a winning charitable gaming ticket.
33. Except when the organization closes a commingled game at a predetermined date and time, no organization may allow any player to buy out a commingled game.
34. The organization shall conduct an interim audit of each commingled game of a site at least monthly by a person who is independent of the jar operator. However, if the organization closes a commingled game at the site at least monthly, the monthly interim audit of that game is not necessary. In addition, if an organization's percent-of-accuracy of all the commingled games of charitable gaming tickets for a gaming

site for the previous quarter, for which a gaming tax return was filed, was less than ninety-eight and one-half percent, the organization shall conduct an interim audit of each commingled game at that site at least weekly by a person who is independent of the jar operator. The organization shall use an audit form prescribed by the attorney general. If the cash short of the interim audit is material, the gaming manager shall document in writing the corrective action taken. The organization may use an electronic counting scale in the conduct of the audit. This subsection does not apply to a gaming site that meets the criteria of subdivision b of subsection 2 that enables the organization to close a commingled game at the organization's discretion, or if the commingled game at that site is closed at least weekly because the organization added at least one hundred deals to the commingled game.

35. Unless the organization has a posted house policy governing the manner in which a commingled game is being closed, the following requirements must be applied:
 - a. A sign stating that the commingled game is being sold out must be posted at a location that is clear and visible to the players.
 - b. When there are less than four winning charitable gaming tickets, through a certain level of denomination selected by the organization, remaining in the game as unredeemed, the organization shall immediately discontinue posting the number of tickets remaining in the game as unredeemed.
36. If a commingled game that has a last sale feature is sold out, the organization shall award a player the value of the last sale feature. However, the jar operator may not provide any player with charitable gaming tickets equivalent to the value of the last sale feature. Rather, after a player actually purchases the last ticket of the game, the jar operator shall award the player the cash prize of the last sale.
37. No organization may purchase a merchandise prize for a club special, tip board, seal board, or punchboard for a cost that exceeds the prize's current retail price.
38. A merchandise prize must be displayed in the vicinity of the seal board or punchboard. The prize must be in full view of any player prior to that player purchasing the opportunity to play. Upon a determination of a winner of a merchandise prize, the organization shall immediately remove that prize from any display and provide it to the winner.
39. No club special, tip board, seal board, or punchboard may be taken out of play at a site once that deal has been offered for sale unless all chances have been sold, or all numbered

lines have been won by players who have registered their names, or all the highest denomination of winning punches have been redeemed, or the organization is transferring the deal to another site on a rotating site schedule. If the organization is discontinuing gaming at a site and a deal which is in play does not qualify to be taken out of play, the organization shall transfer the deal to another gaming site unless the organization first requests and receives written permission from the attorney general to take the deal out of play. However, if a club special, tip board, or punchboard has been in play for at least ninety days and all of the highest denomination of winning tickets have not been redeemed or all chances have not been sold, the game may be taken out of play only if written approval is first obtained from the attorney general.

40. No jar operator may pay, from gaming funds or any other source, a prize to any player unless the player redeems an actual winning charitable gaming ticket.
41. If a jar operator leaves a jar bar unattended, the jar operator shall safeguard the organization's games, cash, and daily activity records.
42. The organization may refuse to sell charitable gaming tickets to any person the organization believes is involved in soliciting or receiving inside information.
43. For determining the prize value of whether a record of the win (section 10-04.1-08-08) is required when there are two or more winning prizes on one charitable gaming ticket (for example, crisscross game), each prize value, rather than the aggregate, is the determining factor.
44. No organization may publicly display the actual redeemed winning charitable gaming tickets.
45. If an organization believes that a deal is defective, the organization shall follow guidelines prescribed by the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-04. State gaming stamp number and game serial number.

1. No deal of charitable gaming tickets, including club specials, tip boards, and seal boards, ~~or punchboards, or sports pool boards,~~ may be put out for play unless the flare has a North Dakota state gaming stamp attached which had been previously

affixed thereto by a licensed distributor. Once affixed, such that state gaming stamp may not be tampered with by any person.

2. No organization may modify or otherwise change the game serial number that was written on the state gaming stamp by the distributor.
3. No organization may intentionally place a deal, or paper-type punchboard, ~~or sports pool board~~ in play unless the game serial number of such that deal, or punchboard, ~~or sports pool board~~ corresponds to the game serial number written on the state gaming stamp by the distributor. If the two numbers do not correspond, the organization shall immediately:
 - a. Notify the distributor from whom the game was purchased.
 - b. Complete a standard form prescribed by the attorney general which must contain such necessary and reasonable information as the attorney general requires. The organization shall attach this form to the flare of the deal or punchboard in play.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-05. ~~Play of games— Restriction~~ Special restrictions.

1. No organization may place a deal of charitable gaming tickets, including club specials and tip boards, or punchboard in play:
 - a. Unless the face of the flare of such that deal or punchboard as received from the distributor describes the name of the game, cost per play, number of winners by denomination, and winning number, symbol, or set of symbols.
 - b. Which has been prohibited by the attorney general from play within this state.
 - c. Which had the manufacturer's or distributor's permanent adhesive seal broken on the manufacturer's games' package, box, or other container when such that game was received from the distributor. The organization shall return such a game to the distributor who shall issue a credit memo to evidence the returned game. However, this subdivision does not apply to punchboards.
2. No organization may, independent of a distributor, design a deal's or punchboard's ideal gross proceeds, or ideal prizes,

~~or ideal adjusted gross proceeds,~~ including adding or deleting a last sale feature, or changing the payout structure of a game to other than that stated on the flare before or after a deal or punchboard is placed in play. However, this ~~rule subsection~~ does not apply to seal boards.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-06. Gross proceeds and cash banks ~~for single games -~~ Restriction. Gross proceeds for ~~single games~~ a commingled game, club special, tip board, seal board, and punchboard must be separately maintained ~~for each deal of charitable gaming tickets, including club specials, tip boards, and seal boards, or punchboard~~ while the game is in play. Cash banks ~~for single games~~ must be used according to this section. No organization is exempt from this requirement unless approval for use of any alternate cash bank method is first requested in writing of the attorney general and approval is granted. An alternate cash bank method must meet the specific control objective of accurately determining each ~~deal's or punchboard's game's~~ actual cash profit. ~~When a~~ A cash bank for a single game is used by the organization, it must meet either of the following three requirements:

1. A separate cash bank must be maintained for each ~~deal or commingled game, club special, tip board, seal board, and punchboard~~ in play.
2. A central cash bank must be maintained for use by several ~~deals or punchboards~~ games in play to determine each ~~deal's or punchboard's actual cash profit.~~ The central cash bank must be used as a source of cash for borrowing to each game. An I.O.U. form must be used to record the lending and payback of cash bank funds. The I.O.U. form must include:
 - a. Name of game that cash bank funds were loaned to.
 - b. For a club special, tip board, seal board, and punchboard, the game's gaming stamp number.
 - c. For a club special, tip board, seal board, and punchboard, the game's game serial number.
 - d. Amount of loan.
 - e. Date of loan.
 - f. Amount repaid.
 - g. Date of repayment.

- h. Signature of cash bank cashier or jar operator for each transaction.
3. A cash register must be used for one or more ~~deals or punchboards~~ games in play.
- a. The cash register must have the capability to issue consecutively numbered receipts containing at least the following information which must be provided to the player:
- (1) Name of the gaming site or organization.
 - (2) Date of the sale or prize redemption.
 - (3) Amount of money paid for the purchase of or received for the prize redemption of charitable gaming tickets, or punchboard punches.
 - (4) Code representing the type of sale or prize redemption.
 - (5) Consecutive customer receipt number.
- b. The cash register must have at least a consecutive four-digit customer receipt number which does not return to zero at the conclusion of any period of use. Further, any cash register used must retain its transaction count between uses whether or not its power source is interrupted.
- c. The cash register must have sufficient keys to record separately each type of sale and prize redemption, and must provide a total for each type of sale and prize redemption recorded.
- d. All cash register receipts for voids, underrings, overrings, no sales, and any other related receipts must be retained with the daily deal and punchboard records.
- e. All transactions, customer receipt numbers, and control totals must be recorded on the tape retained in the cash register. The internal tape, showing these transactions, must be retained with the daily deal and punchboard records. If the cash register is used by the organization for purposes other than recording the sales and prize redemptions of charitable gaming tickets, ~~and punchboards~~ or punchboard punches, the internal cash register tapes from other uses must also be retained for at least three years.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-08-07. Operation of the games Coin-operated dispensing device.

~~†~~ Charitable A commingled game of gaming tickets may be dispensed from a coin-operated dispensing device provided that at least all of the following requirements are met:

~~a.~~ 1. The organization, in using the device, shall meet the requirements of ~~this state's laws and rules~~ North Dakota Century Code chapter 53-06.1 and this article, including formal directives of the attorney general, regarding the conduct and play of games of chance in regard to charitable gaming tickets. ~~These must include, but not be limited to, requirements of,~~ including:

~~†1~~ a. Affixing of flare to the coin-operated dispensing device (subsection 1 of section ~~10-04.1-08-02~~ 10-04.1-08-04).

~~†2~~ b. Using proper cash banks (section 10-04.1-08-06).

~~†3~~ c. Placing ~~an entire deal~~ two or more intermixed deals of charitable gaming tickets in play at the same time ~~(subsection 9 of section 10-04.1-08-07).~~ A deal added to the commingled game must be thoroughly intermixed with the deals in play.

~~†4~~ d. Establishing a time limitation for redeeming a winning charitable gaming ticket (subsection ~~††~~ 17 of section ~~10-04.1-08-07~~ 10-04.1-08-03).

~~†5~~ e. Not paying a prize to any player who is redeeming a charitable gaming ticket that has left the physical area of the gaming site ~~(subsection 18 of section 10-04.1-08-07).~~

~~†6~~ f. Maintaining a recordkeeping system (section 10-04.1-08-10).

~~b.~~ 2. The organization shall make a coin-operated dispensing device inoperable for use for any play unless both of the following requirements are met:

~~†1~~ a. An organization's employee is on the site and available to redeem winning charitable gaming tickets.

~~†2~~ b. Gaming activity is conducted only during the hours when alcoholic beverages may be dispensed in

accordance with applicable regulations of the state or the political subdivision.

- ~~c.~~ 3. The organization shall maintain key control of a coin-operated dispensing device.
 - ~~d.~~ 4. The organization may not allow a person under twenty-one years of age to purchase a charitable gaming ticket from a coin-operated dispensing device. This rule does not prohibit a device from being placed in a site where persons under the age of twenty-one may be present (for example, bingo site).
- ~~1.1.~~ An electronic punchboard may be used provided that at least all of the following requirements are met:
- ~~a.~~ The organization in using the electronic punchboard shall meet the requirements of this state's laws and rules, including formal directives of the attorney general, regarding the conduct and play of games of chance in regard to punchboards. These must include, but not be limited to, requirements of:
 - ~~(1)~~ Requiring payment in full from the player prior to the player's play ~~(section 10-04.1-04-19)~~.
 - ~~(2)~~ Using proper cash banks ~~(section 10-04.1-08-06)~~.
 - ~~(3)~~ Establishing a time limitation for redeeming a winning ticket ~~(subsection 11 of section 10-04.1-08-07)~~.
 - ~~(4)~~ Not paying a prize to any player who is redeeming a ticket that has left the gaming site ~~(subsection 18 of section 10-04.1-08-07)~~.
 - ~~(5)~~ Maintaining a recordkeeping system ~~(section 10-04.1-08-10)~~.
 - ~~b.~~ The organization shall make an electronic punchboard inoperable for use for any play unless both of the following requirements are met:
 - ~~(1)~~ An organization's employee is on the site and available to redeem winning tickets.
 - ~~(2)~~ Gaming activity is conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the political subdivision.
 - ~~c.~~ The organization shall maintain physical control of an electronic punchboard.

- d. The organization may not allow a person under twenty-one years of age to play an electronic punchboard. This rule does not prohibit an electronic punchboard from being placed in a site where persons under the age of twenty-one may be present (for example, bingo site).
2. No employee or volunteer of the organization may provide any inside information to any person, by any means whatsoever, related to deals of charitable gaming tickets, including club specials, tip boards, and seal boards, or punchboards, except for only the following information that are special policies which must be posted in accordance with the provisions of subsection 10 of section ~~10-04.1-08-07~~:
- a. For a single game, the specific denomination of winning charitable gaming tickets that is usually used by the organization as an indicator for removing a deal from play when winning charitable gaming tickets have been redeemed through that denomination. (This denomination is selected at the organization's discretion. No organization may, to any person, guarantee or indicate that according to the organization's best knowledge, a certain number of charitable gaming tickets remain in a game as unredeemed.)
 - b. For a commingled game:
 - (1) The minimum number of the highest denomination of winning charitable gaming tickets that remain in the game as unredeemed. (This number is usually used by the organization as an indicator for adding a deal to the game.)
 - (2) The actual number of the highest denomination of winning charitable gaming tickets remaining in the game as unredeemed. (There can be no guarantee.)
3. No organization may modify or otherwise change the flare, including a last sale feature, related to a deal or punchboard once the deal or punchboard has been received from a distributor, or use a flare that arrives in an altered or defaced condition.
- 3.1. No organization may break the manufacturer's seal on a game of charitable gaming tickets' package, box, or other container until immediately prior to the game being placed into play.
4. No organization may permit the display or operation of any deal or punchboard which may have in any manner been marked, defaced, tampered with or otherwise placed in a condition, or operated in a manner, which may deceive the public or which affects the chances of winning or losing upon the taking of any chance thereon.

5. No deal or punchboard may be placed into play unless the cost for each charitable gaming ticket or punchboard punch is clearly posted on the flare.
6. No deal or punchboard may be placed out for play where the value of the prizes to be awarded by the organization differs from the flare as received from the distributor.
7. No charitable gaming ticket or punchboard punch may be sold for a price different than the price stated on the deal's or punchboard's flare.
8. No deal may be placed out for play in the original packages, boxes, or other containers in which it was received from the distributor.
9. When a deal is received from the distributor in two or more packages, boxes, or other containers, all of the deal's charitable gaming tickets from the respective packages, boxes, or other containers must be placed out for play at the same time and in the same receptacle.
- 9.1. The receptacle containing a single game of charitable gaming tickets must be located on top of the jar bar while the game is in play.
10. The organization shall conspicuously post a notice on the site containing the organization's special policies related to the conduct of deals and punchboards. The notice must be clear and legible, and posted at a location that is easily visible to the players. The policies must at least include monetary limits on check writing, last sale feature prize payout when two or more players purchase the last charitable gaming ticket of a game, time limits on player redemptions of winning charitable gaming tickets (subsection 11 of section 10-04.1-08-07), and freezing games (subsection 12 of section 10-04.1-08-07). The organization's special policies must indicate at least:
 - a. That either freezing of the organization's games in play is allowed or freezing of the organization's games in play is not allowed.
 - b. The information, if any, authorized by subdivisions a and b of subsection 2 of section 10-04.1-08-07, that the organization is providing to all players. The organization shall post the specific information on a notice at the jar bar so that each player has an equal opportunity to read such information without having to ask the jar operator for the information.
- 10.1. The organization shall conspicuously post a notice on the site that states: "Providing any inside information to any person;

by any means whatsoever, about games of charitable gaming tickets is a class A misdemeanor punishable by a one thousand dollar fine and one year in jail".

- +1. The organization shall establish a policy that requires a player to redeem a winning charitable gaming ticket within a maximum time limit of fifteen minutes from the time the charitable gaming ticket was purchased by the player.
- +2. No organization may allow the freezing of a game for a particular player unless at least all of the following requirements are met:
 - a. There may be no freezing of the game unless the player has wagered at least double the amount of the highest denomination of the winner or winners of the game, or five hundred dollars, whichever is less, in continuous play.
 - b. There shall be no freezing of the game when two or more players are actively purchasing charitable gaming tickets from the game unless there is mutual agreement.
 - c. The organization may establish a special policy that is more strict than the provisions of this subsection. An example of a more strict special policy is to not allow freezing of the game unless the player has wagered at least triple, rather than double, the amount of the highest denomination of the winner or winners of the game, or five hundred dollars, whichever is less, in continuous play.
 - d. The player must be involved in continuous play in the game whereby that player is either opening charitable gaming tickets, or is in the process of purchasing charitable gaming tickets from the game.
 - e. There may be no freezing of the game overnight.
- +2.1. The organization is prohibited from freezing games of charitable gaming tickets if it is determined by the attorney general that such play has resulted in abnormal problems involving that organization.
- +3. No employee or volunteer may assist players in the opening of purchased charitable gaming tickets except in the assistance of a handicapped player.
- +4. No organization may purchase a merchandise prize for a cost that exceeds the usual cost to any normal customer.
- +5. All merchandise prizes must be displayed in the vicinity of the seal board or punchboard. Such prizes must be in full view of any player prior to that player purchasing the

- opportunity to play. Upon a determination of a winner of a merchandise prize, the organization shall immediately remove that prize from any display and provide it to the winner.
16. The jar operator may not pay a prize to any player who is redeeming a winning charitable gaming ticket that has in any manner been marked, defaced, tampered with, or otherwise placed in a condition which may deceive the organization.
17. Except as provided by subsection 21 of section ~~10-04.1-08-07~~, the jar operator may not pay a prize to any player unless the player redeems an actual winning charitable gaming ticket; however, for single games only, a prize payout may be made to a player for no more than the amount of one lost or unredeemed charitable gaming ticket provided that at least all of the following requirements are met:
- a. The jar operator must delay the prize payout until a minimum time limit of fifteen minutes has elapsed from the time the game is bought out by the player. All charitable gaming tickets of the game must have been sold.
 - b. The jar operator must make a record of the win in accordance with section ~~10-04.1-08-08~~.
18. The jar operator may not pay a prize to any player who is redeeming a winning charitable gaming ticket that has left the gaming site where the deal is in play. The organization shall define the physical location of the "gaming site" in its posted special policies (subsection 10 of section ~~10-04.1-08-07~~).
19. The jar operator may not pay a prize to any player who is redeeming a winning charitable gaming ticket after the time limit set by the organization's policy (subsection 11 of section ~~10-04.1-08-07~~).
20. The jar operator shall deface the winning number, symbol, or set of symbols of each winning charitable gaming ticket redeemed, regardless of its denomination.
21. For single games only, the organization may make a prize payout to a player for more than the amount of one lost or unredeemed charitable gaming ticket, provided that the attorney general has first determined that the game is defective and has notified the organization in writing of that fact.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-16.1, 53-06.1-17

10-04.1-08-07.1. Electronic punchboard. An electronic punchboard may be used if at least all the following requirements are met:

1. The organization in using the electronic punchboard shall meet the requirements of this state's laws and rules, including formal directives of the attorney general, regarding the conduct and play of games of chance in regard to punchboards. These must include, but not be limited to, requirements of:
 - a. Requiring payment in full from the player prior to the player's play (section 10-04.1-04-19).
 - b. Using proper cash banks (section 10-04.1-08-06).
 - c. Establishing a time limitation for redeeming a winning ticket (subsection 17 of section 10-04.1-08-03).
 - d. Not paying a prize to any player who is redeeming a ticket that has left the physical area of the gaming site.
 - e. Maintaining a recordkeeping system (section 10-04.1-08-10).
2. The organization shall make an electronic punchboard inoperable for use for any play unless both of the following requirements are met:
 - a. An organization's employee is on the site and available to redeem winning tickets.
 - b. Gaming activity is conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the political subdivision.
3. The organization shall maintain physical control of an electronic punchboard.
4. The organization may not allow a person under twenty-one years of age to play an electronic punchboard. This subsection does not prohibit an electronic punchboard from being placed in a site where persons under the age of twenty-one may be present (for example, bingo site).

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-08. Record of the win. When any player or players is paid for wins a last sale feature or a seal prize value of any cash amount or wins, a cash prize of fifty dollars or greater than one hundred dollars from the play of any deal of charitable gaming tickets a

club special, tip board, seal board, or punchboard, or, when subdivision b of subsection 17 of section 10-04.1-08-07 applies with respect to a prize payout for a lost or unredeemed charitable gaming ticket or a cash prize of more than one hundred dollars from the play of a commingled game of charitable gaming tickets, the organization shall make a record of the win. However, the attorney general may require any or all organizations to make a record of the win of any cash prize amount determined by the attorney general. The record of the win must be completed for the total cash prize payout regardless if the player intends to split the player's cash prize with another player. The record of the win must consist of either a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt. The check or receipt must include at least the following information:

1. The jar operator shall legibly print, in ink, on the face ~~or back~~ of the check or receipt at least the following:
 - a. Name of the gaming site.
 - b. Gaming stamp number.
 - c. Game serial number.
 - d. Name of the game.
 - e. ~~Month, day, and year represented by the check or receipt date~~ Amount of the cash prize.
 - f. ~~Prize amount represented by the check or receipt amount~~ Date of the cash prize payout.
 - g. If the payee is actually personally known by the jar operator, the payee's full name and driver's license number, including state of license registration.
 - h. If the payee is not personally known by the jar operator, the payee's full name, street address (if available) or rural route or post-office box number, city, state, zip code, and driver's license number, including state of license registration. This information must be identified by the jar operator directly from the payee's pictured driver's license or other pictured identification. If the payee does not have a pictured driver's license or other pictured identification, the jar operator must shall indicate the payee's full name and correct address which will include the, street address (if available) or rural route or post-office box number, city, and state, and zip code which must be taken from another form at least two forms of identification. The organization shall determine the real identity of the payee and require such additional proof of identification from a reliable source as is necessary to properly establish the payee's identity. The

organization may not pay out any prize unless and until the payee has fully and accurately furnished to the organization all information required by this section. If the payee does not have a pictured driver's license or at least two forms of identification, the organization shall mail the cash prize to the payee.

~~2. i.~~ The check or receipt must be either legibly signed or initialed, in ink, by Legible signature of the jar operator issuing who completed the check. However, when subdivision b of subsection 17 of section 10-04.1-08-07 applies, it is recommended that at least a second gaming employee or volunteer also sign or initial, in ink, the check or receipt to acknowledge the prize payout record of the win.

2. After the record of the win is completed by the jar operator, the payee shall legibly sign and date, in ink, the record of the win to acknowledge the cash prize amount.

3. The jar operator shall legibly print, in ink, the check or receipt number on the winning charitable gaming ticket or punchboard punch. However, this particular rule is not applicable to a payout for a last sale feature or when subdivision b of subsection 17 of section 10-04.1-08-07 applies.

~~4. It is recommended that the organization also make a record of the win for cash prizes equal to one hundred dollars.~~

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-08-08.1. Person prohibited from falsifying record of the win.

1. No gaming employee or volunteer or player may falsify any information of a record of the win. No gaming employee or volunteer may willfully or deliberately disregard the requirements of section 10-04.1-08-08 in completing the record of the win and intentionally or unintentionally through negligence of responsibility falsify or permit a player to falsify the record of the win when the exercise of reasonable care by the gaming employee or volunteer would have prevented or detected the player's falsification, including a player's conspiracy with another person to have the other person claim the cash prize. No player may knowingly or willfully provide or conspire with another person to provide false player identification information in deliberate disregard of the requirements of section 10-04.1-08-08. No player who has

actually won a cash prize of an amount requiring a record of the win may through a fraudulent scheme have any other person claim the cash prize.

2. If the organization determines that a player has falsified, attempted to falsify, or conspired with another person to falsify the record of the win, the organization shall deny the player the cash prize and notify the attorney general or a local law enforcement agency.
3. The organization may post a clear and legible notice in a conspicuous location at the gaming site to notify persons of the prohibition against attempts to falsify or falsifying a record of the win and warn of the consequences of violating this prohibition.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-09.1. Reconciliation of inventory control records.

1. The organization shall, on at least a quarterly basis, compare its inventory control records, as described by subdivision b of subsection 4 of section 10-04.1-08-10, of deals of charitable gaming tickets, including club specials, tip boards, and seal boards, and punchboards that are recorded as being in play and unplayed to games that are actually in play and actually in inventory as unplayed. The organization shall reconcile any difference. The reconciliation must be performed by a person or count team who is independent of the person who has custody of the physical inventory of the games, including the site manager and gaming manager.
2. The organization shall document in writing that the reconciliation was performed. The documentation must include at least the following information:
 - a. Name and job position of the person who performed the reconciliation.
 - b. Date the reconciliation is conducted.
 - c. Procedure employed.
 - d. Result and corrective action taken.
 - e. Signature of the person who performed the reconciliation.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-10. Recordkeeping system required.

1. Except as provided by subdivision a of subsection 2 of section ~~10-04.1-08-10~~, a licensed and subdivision a of subsection 3, an organization shall retain daily accounting records with regard to deals of a commingled game of charitable gaming tickets, including club specials special, tip boards board, and seal boards board, and punchboards punchboard for a period of three years from the end of the quarter for in which the records are kept charitable gaming ticket and punchboard activity occurred unless the organization is released by the attorney general from this requirement. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following items for each deal or punchboard played commingled game:
 - a. The flare flares, with the state gaming stamp stamps affixed, together with all redeemed opened winning charitable gaming tickets or punches and all unopened and unsold charitable gaming tickets or punches which must be segregated by game serial number, except, if these items relate to a commingled game of. The redeemed winning and the unsold charitable gaming tickets, they are not required to be segregated by game serial number. However, for redeemed winning tickets of a commingled game of charitable gaming tickets, the organization shall account for each deal's highest denomination of redeemed tickets by game serial number by a method that provides the organization the capabilities of timely identifying a ticket redeemed by a player when that ticket was not sold by the organization and timely locating retained tickets upon request by the attorney general. The organization may not open any unsold or defective charitable gaming tickets, or punch any unsold or defective punchboard punches. The records referenced by this section subdivision must be retained by the organization for a period of one year from the end of the quarter for in which the records are kept commingled game activity occurred unless the organization is released by the attorney general from this requirement. The attorney general may require that the records be retained for an extended period if certain questionable conditions prevail.
 - b. Records documenting the daily starting and ending cash on hand. It is recommended that the count of the cash be verified by at least two persons who shall sign or initial such verification. For redeemed winning tickets of a commingled game, the organization shall account for each deal's highest denomination of redeemed tickets by game serial number by a method that provides the organization the capabilities of timely identifying a ticket redeemed

by a player when that ticket was not sold by the organization and timely locating retained tickets upon request by the attorney general and law enforcement officials.

c. For commingled games, records Records documenting the daily activity of games placed and removed from play, by gaming stamp number and game serial number each deal, including the date each deal was placed in play and an accounting of the redeemed winning charitable gaming tickets (not required to be segregated by game serial number) that are placed in that deal's bag or other container, by date, for retention purposes. This accounting must include the number of tickets, by each denomination of prize, and the total value of these tickets for all denominations of prizes. Except for the application of subsection 18 of section 10-04.1-08-03, this accounting is done when an additional deal is added to the commingled game and when the organization closes a commingled game.

d. Records documenting each day's cash bank activity, including the opening cash bank, closing cash bank, actual cash profit, increase or decrease in the opening cash bank for the next day's activity (if any), and bank deposit.

3. The recordkeeping system must include at least the following items for each club special, tip board, seal board, and punchboard:

a. The flare, with the state gaming stamp affixed, together with all redeemed winning charitable gaming tickets or punches and all unopened and unsold charitable gaming tickets and punches. The redeemed winning and unsold charitable gaming tickets and punches must be segregated by game serial number. The organization may not open any unsold or defective charitable gaming ticket or punch any unsold or defective punchboard punch. The records referenced by this subdivision must be retained for one year from the end of the quarter in which the gaming activity occurred unless the organization is released by the attorney general from this requirement.

b. Daily activity records documenting the name of game, gaming stamp number, game serial number, actual starting cash bank, previous game's gaming stamp number and game serial number from which the actual starting cash bank originated, following game's gaming stamp number and game serial number to where the ending cash bank is destined, and the reason why the game was closed.

4. The recordkeeping system must include at least the following items for each commingled game, club special, tip board, seal board, and punchboard:
- a. Records documenting the daily starting and ending cash on hand. Unless there is only one gaming employee or volunteer scheduled on duty, the count of the cash must be verified by at least two persons who shall sign or initial and date that verification.
 - ~~d.~~ b. Inventory control records documenting must include at least the ~~purchases, issuances~~ name of game, sales invoice number and date, date received, dates of issuance to and from a site, ~~playings reportings on the site~~ name, period played, quarter gaming tax return on which reported, and ~~disposals of games~~ date and method of disposal for each game, by gaming stamp number and game serial number. Unless a class B organization has only one site which is the location of the organization's home office, the class B organization shall maintain inventory control records at each site and the records must include, for each deal and punchboard, at least the name of game, dates received from and returned to the home office, by gaming stamp number and game serial number.
 - ~~e.~~ c. Record of the win as required by section 10-04.1-08-08.
 - ~~f.~~ d. Records providing a A reconciliation, by site, (summary) of each game's ideal gross proceeds, value of unsold tickets or punches, actual gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
 - ~~3.~~ e. All daily activity records must be retained at the site or completed by use of a nonerasable ink pen, be readily available as long as at the site until the deal or punchboard game is in play closed, and be legibly signed or initialed and dated by the person completing the record.
 - f. For each deal of charitable gaming tickets involving single folded (jar ticket) or banded tickets (jar ticket), the deal's game information sheet (see subsection 4.1 of section 10-04.1-14-18) must be retained with the daily activity records.
 - g. Unless the gaming activity of a closed game is summarized by a person who is independent of any person who was directly or indirectly involved in operating the game while the game was in play, including the site manager and gaming manager, the summarization must be audited by a person who is independent of the person who summarized the closed game. If there is a variance between the

summarization and audit, the person who audited the game shall notify the gaming manager or other appropriate organization representative of the variance.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-08-11. Actual cash profit bank deposit required by licensed organizations.

1. For a ~~single game of charitable gaming tickets, including a club special, tip board, and seal board, and punchboard,~~ the actual cash profit, less the increase or plus the decrease in the starting cash bank for the next deal, plus the amount of prizes paid by check that were not cashed at the site and the actual cost of any merchandise prizes previously paid by check, must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day the deal or punchboard is removed from play. If the organization prepares a deposit slip for the deposit of actual cash profit from only one ~~deal of charitable gaming tickets club special, tip board, seal board, or punchboard,~~ the validated bank deposit slip or receipt must contain a reference to the name of the deal or punchboard, deposit amount, include the respective state gaming stamp number, and must be included as part of the daily accounting records of the deal or punchboard.
2. For a commingled game of charitable gaming tickets, the actual cash profit for a specific day of activity must be deposited, intact, in the organization's general gaming bank account no later than the fifth banking day following that day of activity. If the organization prepares a deposit slip for the deposit of actual cash profit from only one day's commingled game activity, the validated bank deposit slip or receipt must contain a reference to the name of the commingled game, date of the gaming activity, deposit amount, and must be included as part of the daily accounting records of that commingled game. The actual cash profit to be deposited must be calculated by either of the following two requirements:
 - a. The amount of ending cash on hand less the starting cash bank and less the increase or plus the decrease in the starting cash bank for the next day's activity.
 - b. The amount of ending cash on hand in excess of the starting cash bank that can be divided equally by the ideal adjusted gross proceeds of the particular deal commingled.

EXAMPLE:

Ending cash on hand	\$960
Less: Starting cash bank	150
Actual cash profit available for deposit	<u>\$810</u>
Divided by: Ideal adjusted gross proceeds per particular deal	<u>100</u>

Number of deals' ideal adjusted gross proceeds 8
(disregard any remainder - for example, 8.1 must be accounted for as 8)

Ideal adjusted gross proceeds per particular deal	\$100
Multiply by: Number of deals' ideal adjusted gross proceeds	8
Actual cash profit to be deposited	<u>\$800</u>

Actual cash profit to be carried over to the next day's activity (\$810 - 800) \$ 10

However, if a commingled game was closed at a gaming site that meets the criteria of subdivision b of subsection 2 of section 10-04.1-08-03, the organization may calculate the actual cash profit bank deposit according to either subsection 1 or subsection 2 of this section.

3. For a single game club special, tip board, seal board, punchboard, and a commingled game of charitable gaming tickets, if the organization prepares one deposit slip for the deposit of actual cash profit from more than one single club special, tip board, seal board, punchboard, or commingled game or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-06-15 (bingo), 10-04.1-07-10 (raffles), 10-04.1-09-04 (professional sports pools), 10-04.1-10-23 (twenty-one), and 10-04.1-10.1-25 (poker), and 10-04.1-10.2-06 (calcuttas). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-09-01. Sports pool. "Sports pool" is a sheet of paper, cardboard, or similar material on which is printed a square.

selling ~~such~~ those squares or lines. The purchaser of a square or line ~~places~~ writes the purchaser's name in that square or line. The ~~tapes~~ covering the numbers assigned each row may be removed when all the squares or lines are sold. If all the squares or lines are not sold, the organization shall advance the sports-pool board to ~~the next~~ another professional sporting event. The organization shall conspicuously post a notice on the site containing the organization's special policy for advancing an unsold board.

5. The winner of a sports-pool board is determined, at the conclusion of each payout period and in accordance with the prize payout method, as follows:
 - a. For a ten-number sports-pool board, by determining the line which is assigned the last number (ones position) of the combined score of the two professional sports teams in the sporting event. For example, if the combined score was twenty-three, the winning player is that player who purchased the line assigned the number three.
 - b. For a twenty-five-number and one hundred-number sports-pool board, by determining the square at the juncture of the horizontal row and vertical column containing which relate to the numbers (ones position) of the outcome of the sporting event each team's score.
6. The device so constructed must have a game serial number and be acquired only from licensed distributors.
7. No professional sports-pool board may be put out for play unless a North Dakota state gaming stamp has been affixed to the sports-pool board by a licensed distributor. Once affixed, the state gaming stamp may not be tampered with by any person.
8. No organization may modify or otherwise change the game serial number that was written on the state gaming stamp by the distributor.
9. The organization operating the sports pool shall determine the method of prize payout to the players. The method of payout must be indicated on the sports-pool board in a form that is clear and legible, and must be done ~~so~~ prior to the start of the sports event associated with the sports pool. The total payout may not exceed ninety percent of the actual gross proceeds of the sports pool. (For example, winners of a sports pool conducted for a particular professional football game may be determined at the end of each quarter of the game according to the score at that point. The payout each quarter need not be in direct proportion to the total ninety percent payout.) Only cash prizes can be awarded.

10. Gross proceeds must be separately maintained for each sports-pool board in play in order to determine each sports-pool board's actual cash profit.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-09, 53-06.1-17

10-04.1-09-02. Record of the win.

~~+~~ When any player wins a cash prize greater than one hundred dollars, the organization shall make a record of the win. However, the attorney general may require any organization to make a record of the win of any cash prize amount determined by the attorney general. The record of the win must be completed for the total cash prize payout regardless if the player intends to split the player's cash prize with another player. The record of the win must consist of a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt ~~and the~~. The check or receipt must include at least the following information:

1. The organization shall legibly print, in ink, on the face of the check or receipt at least the following:

- a. Name of the gaming site.
- b. Gaming stamp number.
- c. Game serial number.
- d. ~~Date of the professional sporting event.~~ Game type (sports-pool board).
- e. Amount of the cash prize ~~won~~.
- f. ~~Name and~~ Date of the cash prize payout.
- g. Full name, street address (if available) or rural route or post-office box number, city, state, and zip code of the winner payee.
- ~~g-~~ h. Driver's Unless the organization maintains current master records of player identification information, the record of the win must include the payee's driver's license number, including state of license registration. The organization is responsible for the accuracy of the master records. This information must be identified by the organization directly from the payee's pictured driver's license. If the payee does not have a pictured driver's license, the organization shall indicate the payee's full

name and correct address which will include the, street address (if available) or rural route or post-office box number, city, and state, and zip code which must be taken from another form at least two other forms of identification. The organization shall determine the real identity of the payee and require such additional proof of identification from a reliable source as is necessary to properly establish the payee's identity. The organization may not pay out any prize unless and until the payee has fully and accurately furnished to the organization all information required by this section. If the payee does not have a pictured driver's license or at least two forms of identification, the organization shall mail the cash prize to the payee.

i. Legible signature of the organization representative who completed the record of the win.

2. It is recommended that the organization also make a record of the win for cash prizes equal to one hundred dollars. After the record of the win is completed by the organization, the payee shall legibly sign and date, in ink, the record of the win to acknowledge the cash prize amount.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-09-02.1. Person prohibited from falsifying record of the win.

1. No gaming employee or volunteer or player may falsify any information of a record of the win. No gaming employee or volunteer may willfully or deliberately disregard the requirements of section 10-04.1-09-02 in completing the record of the win and intentionally or unintentionally through negligence of responsibility falsify or permit a player to falsify the record of the win when the exercise of reasonable care by the gaming employee or volunteer would have prevented or detected the player's falsification, including a player's conspiracy with another person to have the other person claim the cash prize. No player may knowingly or willfully provide or conspire with another person to provide false player identification information in deliberate disregard of the requirements of section 10-04.1-09-02. No player who has actually won a cash prize of an amount requiring a record of the win may, through a fraudulent scheme, have any other person claim the cash prize.

2. If the organization determines that a player has falsified, attempted to falsify, or conspired with another person to

falsify the record of the win, the organization shall deny the player the cash prize and notify the attorney general or a local law enforcement agency.

3. The organization may post a clear and legible notice in a conspicuous location at the gaming site to notify persons of the prohibition against attempts to falsify or falsifying a record of the win and warn of the consequences of violating this prohibition.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-09-02.2. Reconciliation of inventory control records.

1. The organization shall, on at least a quarterly basis, compare its inventory control records, as described by subdivision f of subsection 2 of section 10-04.1-09-03, of sports-pool boards that are recorded as being in play and unplayed to games that are actually in play and actually in inventory as unplayed. The organization shall reconcile any difference. The reconciliation must be performed by a person who is independent of the person who has custody of the physical inventory of the sports-pool boards, including the site manager and gaming manager.
2. The organization shall document in writing that the reconciliation was performed. The documentation must include at least the following information:
 - a. Name and job position of the person who performed the reconciliation.
 - b. Date the reconciliation was conducted.
 - c. Procedure employed.
 - d. Result and corrective action taken.
 - e. Signature of the person who performed the reconciliation.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-09-03. Recordkeeping system required.

1. Except as provided by subdivision a of subsection 2 of section ~~10-04.1-09-03~~, a licensed organization shall retain daily accounting records with regard to professional sports-pool

boards for a period of three years from the end of the quarter for in which the records are kept sports-pool activity occurred unless the organization is released by the attorney general from this requirement. The records must be maintained in the state of North Dakota.

2. The recordkeeping system must include at least the following records for each professional sports-pool board played:
 - a. The completed, sold sports-pool board indicating the winning squares or lines. The sports-pool board must be retained by the organization for a period of one year from the end of the quarter for in which the records are kept sports-pool activity occurred unless the organization is released by the attorney general from this requirement.
 - b. Records documenting the daily starting and ending cash on hand. It is recommended that Unless there is only one gaming employee or volunteer scheduled on duty, the count of the cash must be verified by at least two persons who shall sign or initial such and date that verification.
 - c. Records providing a documenting the actual starting cash bank, type of professional sport, designation of when prizes are paid (for example, game, half, period, quarter, inning), and amount of each prize.
 - d. A reconciliation, by site, (summary) of actual gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
 - ~~d.~~ e. Record of the win as required by section 10-04.1-09-02.
 - ~~e.~~ f. Inventory control records documenting must include at least the purchases issuances sales invoice number and date, date received, dates of issuance to and from a site, playings site name, period played, reportings on the quarter gaming tax return on which reported, and disposals of sports pools date and method of disposal for each sports-pool board, by gaming stamp number and game serial number. Unless a class B organization has only one site which is the location of the organization's home office, the class B organization shall maintain inventory control records at each site and the records must include, for each sports-pool board, at least the dates received from and returned to the home office, by gaming stamp number and game serial number.
3. All daily activity records must be completed by use of a nonerasable ink pen, be readily available at the site until the sports-pool board is closed, and be legibly signed or initialed and dated by the person completing each record.

4. Unless the gaming activity of a closed sports-pool board is summarized by a person who is independent of any person who was directly or indirectly involved in operating the sports-pool board while the sports-pool board was in play, including the site manager and gaming manager, the summarization must be audited by a person who is independent of the person who summarized the closed sports-pool board. If there is any variance between the summarization and audit, the person who audited the sports-pool board shall notify the gaming manager or other appropriate organization representative of the variance.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-09-04. Actual cash profit bank deposit required by licensed organizations. For a professional sports-pool board, the actual cash profit plus the amount of prizes paid by check that were not cashed at the site, must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day of the professional sporting event. If the organization prepares a deposit slip for the deposit of actual cash profit from only one professional sports-pool board, the validated bank deposit slip or receipt must contain a reference to a professional sports-pool board, date of the professional sporting event, deposit amount, include the respective state gaming stamp number, and must be included as part of the daily accounting records of that sports-pool board. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one professional sports-pool board or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-06-15 (bingo), 10-04.1-07-10 (raffles), 10-04.1-08-11 (charitable gaming tickets and punchboards), 10-04.1-10-23 (twenty-one), and 10-04.1-10.1-25 (poker), and 10-04.1-10.2-06 (calcuttas). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-01. Twenty-one.

1. "Twenty-one" is a card game played by a maximum of seven players and one dealer. The object of the game is for a

player to obtain a higher total card count than the dealer by reaching twenty-one or as close to twenty-one as possible without exceeding that count. The cards have the following value:

- a. Aces count either one or eleven.
 - b. Kings, queens, and jacks each have a count of ten.
 - c. ~~All other cards~~ Cards two through ten are counted at their face value.
2. The rules in sections 10-04.1-10-02 through 10-04.1-10-23, either complementing or in addition to those enumerated by law, must be followed in the playing conduct or play of twenty-one.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-10, 53-06.1-17

10-04.1-10-02. Twenty-one table - Physical characteristics.

1. A playing surface covering the twenty-one table must permanently and clearly display no more than seven separate and distinct betting spaces and the complete statements:

BLACKJACK PAYS 3 TO 2
and
DEALER MUST STAND ON 17 AND MUST DRAW TO 16

2. The playing surface may include special betting places used for the placement of tip bets.
3. Unless only one twenty-one table is used at a site, a table number must be either permanently imprinted, adhesively backed and impressed thereon, or attached to the twenty-one tables.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-03. Twenty-one drop box - Physical characteristics. Unless exempted by section 10-04.1-10-12, each twenty-one table used must be equipped with a double-locking or triple-locking removable metal container known as a "drop box" into which must be deposited all issuance of duplicate fill slips, issuance of original credit slips, and currency received from players for the purchase of chips. Each drop box must have:

1. Unless only one twenty-one table is used at a site, a number either attached, permanently imprinted, or adhesively backed and impressed thereon, and which corresponds to a twenty-one table number.
2. After play has commenced, a money plunger, which must remain in the drop box slot ~~when~~ while the drop box is attached to the twenty-one table except for when currency and forms are inserted into the drop box.
3. One lock that secures the drop box to a twenty-one table, and one or two separate locks which secure the contents placed into the drop box. The key to each of the two or three locks must be different from each of the other locks.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-04. Twenty-one cards - Physical characteristics.

1. The cards used in the game of twenty-one must be four, six, or eight complete ~~standard~~ decks of fifty-two cards each, shuffled together and used as one, a total of two hundred eight deck. The cards must be dealt as a single packet from a card-dealing box called a dealing shoe. Only four, six, or eight decks of the same size, shape, and design playing cards are to be used.
2. The color of the backs of the cards used at any twenty-one table must be of one predominate color on all ~~four~~ decks, or ~~two~~ one-half of the number of decks used must be of one predominate color and the other ~~two~~ one-half of the number of decks used must be of ~~one~~ another different predominate color.
3. The design on the backs of each card in the ~~four~~ decks must be identical and no card may contain any marking, symbol, or design that will enable a person to know the identity of any element printed on the face of the card or that will in any way differentiate the back of that card from any other card in the deck. The backs of the cards may contain a logo.
4. The backs of all cards in the deck must be designed so as to diminish as far as possible the ability of any person to place concealed markings thereon.
5. Only jumbo-faced playing cards are to be used. Except for the required application of subsection 1 of section 10-04.1-10-05.1, this subsection applies to all playing cards purchased by an organization on or after July 1, 1990.

6. No organization may use cards that are taped, defaced, bent, crimped, cut, shaved, or deformed in any other manner.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-04.1. Twenty-one dealing shoe - Physical characteristics.

1. The dealing shoe used in the game twenty-one must have a face plate, a white or transparent base plate, and transparent sides or a cutout under the base plate of each side. The face plate may be transparent or opaque. The shoe must hold four or more complete decks of playing cards. A double shoe may be used. If a double-dealing shoe is used, the organization shall designate by a permanent marking the suits of hearts and diamonds on one side of the shoe and the suits of spades and clubs on the other side of the shoe (see subsection 3 of section 10-04.1-10-17.
2. The dealing shoe may only be set on the twenty-one table during the time the table is open for play and must otherwise be stored in a safe storage place. The organization shall exercise appropriate key control to the safe storage place to restrict access to only authorized gaming employees.
3. Each dealing shoe must be inspected at the beginning of each day's twenty-one gaming activity by the site manager prior to playing cards being inserted into the shoe. The purpose of this inspection is to assure that there is no cheating device on the shoe.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-05. Twenty-one chips - Value and physical characteristics.

1. Each twenty-one chip manufactured for and issued by an organization must be round in shape, be one and nine-sixteenths inches [39.62 millimeters] in diameter and clearly and permanently impressed, engraved, or imprinted on at least one side with the name of the organization issuing it and on at least the opposite side with the specific value of the chip. The name of the organization on the chip may be represented by a related design, symbol, abbreviation, license classification and number, or other identification which must differentiate the organization's chips from those being used

by every other organization. This rule applies to all twenty-one chips purchased by an organization on or after November 1, 1986. All chips purchased prior to November 1, 1986, which do not have the name of the organization on at least one side must be retired effective July 1, 1990.

2. Twenty-one chips ~~must~~ may be issued by an organization in denominations of ~~only~~ fifty cents, one dollar, and two dollars, and five dollars. The organization may determine which of these denominations will be utilized at the organization's site and the quantity of each denomination that will be necessary for the conduct of twenty-one.
3. If an organization first conducts the game twenty-one on or after June 1, 1990, or replaces the organization's twenty-one chips which were purchased and utilized prior to June 1, 1990, the chips must meet the following specifications:

- a. Each denomination of a twenty-one chip must have a different primary color from the other denominations of chips. Each organization may at its discretion utilize contrasting secondary colors for any inlays on each denomination of twenty-one chip. The primary color that must be used by each organization for each denomination of chip must be:

- (1) Fifty cent chip - "mustard yellow" which means that color classified as 5Y 7/6 on the munsell system of color coding which must be reproduced to within the following tolerances:

	<u>Upper limit</u>	<u>Lower limit</u>
<u>Hue:</u>	<u>H+ 7.5Y 7/6</u>	<u>H- 2.5Y 7/6</u>
<u>Value:</u>	<u>V+ 5Y 8/6</u>	<u>V- 5Y 6/6</u>
<u>Chroma:</u>	<u>C+ 5Y 7/8</u>	<u>C- 5Y 7/4</u>

- (2) One dollar chip - "white" which means that color classified as N 9/ on the munsell system of color coding which must be reproduced to within the following tolerances:

	<u>Upper limit</u>	<u>Lower limit</u>
<u>Value:</u>	<u>V+ N9.4</u>	<u>V- N8.75/</u>
<u>Chroma:</u>	<u>5R 9/1</u>	<u>5G 9/0.5</u>
	<u>5 YR 9/1</u>	<u>5B 9/0.5</u>
	<u>5Y 9/1</u>	<u>5P 9/0.5</u>

- (3) Two dollar chip - "pink" which means that color classified as 2.5R 6/10 on the munsell system of color coding which must be reduced to within the following tolerances:

	<u>Upper limit</u>	<u>Lower limit</u>
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Hue:	H+ 3.75R 6/10	H- 1.25R 6/10
Value:	V+ 2.5R 6.75/10	V- 2.5R 5.75/10
Chroma:	C 2.5R 6/12	C- 2.5R 6/8

- (4) Five dollar chip - "red" which means that color classified as 2.5R 4/12 on the munsell system of color coding which must be reproduced to within the following tolerances:

	Upper limit	Lower limit
Hue:	H+ 3.75R 4/12	H- 1.25R 4/12
Value:	V+ 2.5R 4.5/12	V- 2.5R 3.5/12
Chroma:	C+ 2.5R 4/14	C- 2.5R 4/10

- b. The primary color of twenty-one chips must fall within the upper and lower limits of subdivision a of this subsection when the chips are viewed both in daylight and under incandescent light. In conjunction with the primary color, each organization shall utilize a contrasting secondary color for the edge spots on the one dollar, two dollar, and five dollar chips. The edge spots must be visible on the perimeter of both sides of the chip and on the chip's circumference. No organization may use a secondary color on any denomination of chip identical to the primary color used by the organization on another denomination of chip that results in a reversed combination of primary and secondary colors between two or more chips. For example, no organization may select the color white as the secondary color for the five dollar red chip while selecting red as the secondary color for the one dollar white chip.

- c. The edge spots of the one dollar, two dollar, and five dollar chips must be:

- (1) One dollar chip - The chip must have four solid edge spots and each edge spot must be about one-half of one inch [12.7 millimeters] in width.
- (2) Two dollar chip - The chip must have four split edge spots and each edge spot must be about three-eighths of one inch [9.40 millimeters] in width. Each of the two split portions of an edge spot and the space between the two split portions must be about one-eighth of one inch [3.05 millimeters] in width. The two split portions of an edge spot must be the secondary color and the middle space may either be the primary color or a third color.
- (3) Five dollar chip - The chip must have six solid edge spots and each edge spot must be about one-quarter of one inch [6.35 millimeters] in width.

- d. Each denomination of chip must have the chips' graphics so designed so as to be able to determine on closed-circuit black and white television the specific denomination of the chip when placed in a stack of chips of other denominations. The organization may utilize other security features on the organization's chips that distinguish the organization's chips from other organizations' chips.
- ~~←~~ e. Twenty-one chips must be designed, manufactured, and constructed so as to prevent to the greatest extent possible the counterfeiting of ~~such~~ those chips.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-05.1. Special requirements for conducting twenty-one with wagers exceeding two dollars. No organization may conduct the game twenty-one with wagers exceeding two dollars unless the organization meets at least all of the following requirements:

1. Jumbo-faced playing cards must be used.
2. If an organization accepts five dollar wagers, a five dollar twenty-one chip prescribed by subsection 3 of section 10-04.1-10-05 must be available to players for the players' optional use.
3. The attorney general's standard recordkeeping system for twenty-one must be used unless written approval is obtained from the attorney general for use of an alternate recordkeeping system.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10-05.2. Requirement for safeguarding twenty-one chips. The organization shall safeguard the twenty-one chips by securing the chips in a safe storage place or, if the twenty-one table has been opened and no dealer is stationed at that table, securing the chip tray with a locking chip tray cover.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10-06. Wagers and tips to be made with twenty-one chips only. ~~All~~ Except as provided by section 10-04.1-10-07, all wagers and

tips must be made with twenty-one chips furnished by the organization. Currency must be exchanged for chips prior to the starting of play. No money, or other thing of value, may be used as wagers or tips.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-07. Person not to bring their own personal cards or twenty-one chips. No person may bring onto a gaming site, nor introduce into any twenty-one game, any personal playing card or cards, nor any twenty-one chip or chips for use in wagering other than those obtained from the organization. However, an organization may redeem, exchange, or allow to be used as a wager at the site any chip issued by another organization. If the organization redeems, exchanges, or accepts another organization's chip, the organization may redeem the chip for the chip's actual value by presenting the chip to the organization that issued the chip.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-08. Procedure for distributing twenty-one chips to the twenty-one table.

1. A fill slip must be prepared for the distribution of twenty-one chips from the chip bank cashier to the twenty-one table. No organization may transfer or make change of twenty-one chips directly from one twenty-one table to another table. The fill slip must be at least a two-part carbonless form. Access to the fill slips must, prior to use, be restricted to authorized personnel.
2. Fill slips must be serially prenumbered forms and must be used in sequential order. The serial numbers of all fill slips in the possession of the organization must be accounted for by employees with no incompatible functions. All original and duplicate void fill slips must be marked "VOID" and require the legible signature of the preparer.
3. A fill slip must be prepared by the chip bank cashier, pit boss, or site manager whenever twenty-one chips are distributed to the twenty-one table from the chip bank cashier. However, if the dealer is the only gaming employee or volunteer on duty, the dealer shall prepare the fill slip.
4. On the original and duplicate fill slip, the following information, at a minimum, must be recorded:
 - a. The date and time.

- b. The denomination of twenty-one chips.
 - c. The quantity and total dollar value, for each denomination, of twenty-one chips.
 - d. The grand total dollar value of the twenty-one chips.
 - e. The table number, if required by section 10-04.1-10-02.
 - f. The legible signature ~~or initial~~ of the chip bank cashier. However, if the dealer is the only gaming employee or volunteer on duty, the dealer shall legibly sign ~~or initial~~ in place of the chip bank cashier.
5. After preparation of the fill slip, the original copy of ~~such~~ that fill slip must be retained by the chip bank cashier. However, if the dealer is the only gaming employee or volunteer on duty, the dealer shall retain the original copy of the fill slip with the twenty-one daily activity records.
6. If the organization has a site manager or authorized gaming employee on duty who is not presently dealing, this person shall:
- a. Verify the quantity and dollar value of the chips.
 - b. Legibly sign the original fill slip.
 - c. Transfer the copy of the fill slip with the chips to the table.
7. The duplicate copy of the fill slip must be legibly signed ~~or initialed~~ by the dealer assigned to the twenty-one table to which the twenty-one chips are to be received.
- ~~7.~~ 8. Unless exempted by subsection ~~6~~ 7 of section 10-04.1-10-12, the duplicate copy of the fill slip must be deposited in the twenty-one drop box by the dealer.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-09. Procedure for removing twenty-one chips from the twenty-one table.

- 1. A credit slip must be prepared for the removal of twenty-one chips from the twenty-one table to the chip bank cashier. No organization may transfer or make change of twenty-one chips directly from one twenty-one table to another table. The credit slip must be at least a two-part carbonless form.

- Access to the credit slip must, prior to use, be restricted to authorized personnel.
2. Credit slips must be serially prenumbered forms and must be used in sequential order. The serial numbers of all credit slips in the possession of the organization must be accounted for by employees with no incompatible functions. All original and duplicate void credit slips must be marked "VOID" and require the legible signature of the preparer.
 3. Unless exempted by subsection 8 of section 10-04.1-10-12, a credit slip must be prepared by the dealer, chip bank cashier, pit boss, or site manager whenever twenty-one chips are returned from the twenty-one table to the chip bank cashier.
 4. On the original and the duplicate credit slip, the following information, at a minimum, must be recorded:
 - a. The date and time.
 - b. The denomination of twenty-one chips.
 - c. The quantity and total dollar value, for each denomination, of twenty-one chips.
 - d. The grand total dollar value of the twenty-one chips.
 - e. The table number, if required by section 10-04.1-10-02.
 - f. The legible signature ~~or initial~~ of the dealer assigned to the twenty-one table from which the twenty-one chips are to be removed.
 5. After preparation of the credit slip and unless exempted by subsection ~~7~~ 9 of section 10-04.1-10-12, the original copy of ~~such~~ that credit slip must be deposited by the dealer in the twenty-one drop box.
 6. If the organization has a site manager or authorized gaming employee on duty who is not presently dealing, this person shall:
 - a. Verify the quantity and dollar value of chips.
 - b. Legibly sign the original credit slip.
 - c. Transfer the copy of the credit slip with the chips to the cashier.
 7. The duplicate copy of the credit slip must be legibly signed ~~or initialed~~ and retained by the chip bank cashier. However, if the dealer is the only gaming employee or volunteer on

duty, the dealer shall retain the duplicate copy of the credit slip with the twenty-one daily activity records.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-10. Chip bank services.

1. The value at which ~~the three colors of~~ twenty-one chips are sold and redeemed must be conspicuously posted and visible to each person prior to that person purchasing chips.
2. Unless exempted by subsection ~~9~~ 10 of section 10-04.1-10-12, the organization shall sell twenty-one chips at the twenty-one table. See section ~~10-04.1-10-10~~ 10-04.1-10-11.
3. Twenty-one chips must be sold for cash only, and no credit of any nature may be extended by an organization to a person purchasing chips. Checks may not be accepted for purchase of chips at a twenty-one table.
4. Cash taken in on twenty-one chips sold must be kept completely separate and apart from all other cash received by the organization until ~~such time as it is~~ after the cash has been counted. Except for a two-person audit team, no organization may allow any person to access the contents of the twenty-one drop box prior to the time of the count by the count team, financial institution, licensed and bonded provider of security, or security agency.
5. The organization shall redeem its own chips for cash at the value for which they were sold, except when the chips were obtained or being used unlawfully. The cash bank used by the organization to redeem its own chips must be kept completely separate and apart from all other cash of the organization.
6. The organization shall redeem the twenty-one dealer's tips through the cash bank. The dealer shall redeem the actual chips received as tips from players and may not exchange those chips for other chips from any chip tray. This subsection does not preclude pooling of tips.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-10.1. Opening of the twenty-one table for gaming.

1. Prior to twenty-one playing cards being used at a table, the dealer shall inspect and approve all decks.
2. The card inspection at the twenty-one table must require each deck to be used to be sorted into sequence and into suit to assure that all cards are in the deck. The dealer shall also inspect the back of each card to assure that it is not flawed or marked in any way. If, after inspecting the cards, the dealer determines that a certain card is missing, flawed, marked, or extra that might indicate unfair play, the dealer shall immediately notify the site manager who shall take corrective action.
3. After the dealer inspects and approves the cards, the dealer shall spread out the cards face upwards on the table for visual review by the first player to arrive at the table. The cards must be spread out in horizontal fan-shaped rows by deck according to suit and in sequence within the suit.
4. After the first player has an opportunity to visually review the cards, the cards must shuffled so that they are randomly intermixed.

History: Effective June 1, 1990.
 General Authority: NDCC 53-06.1-17
 Law Implemented: NDCC 53-06.1-17

10-04.1-10-11. Procedure for accepting cash at the twenty-one table. Each dealer of the organization who receives currency from a player at a twenty-one table for exchange for twenty-one chips shall observe the following procedures and requirements:

1. The currency must be spread on the top of the twenty-one table, by the dealer accepting it, in full view of the player who presented it and in full view of any gaming person who serves in a supervisory position or pit boss assigned to the table.
2. The amount of currency must be verbalized by the dealer accepting it in a tone of voice loud enough to be heard by the player who presented the currency and all the other players playing at that table.
3. Immediately after an equivalent dollar amount of twenty-one chips has been given to the player, the currency must be taken from the top of the twenty-one table and placed by the dealer into the drop box attached to the table.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.
 General Authority: NDCC 53-06.1-17
 Law Implemented: NDCC 53-06.1-17

10-04.1-10-12. Use of a cash register may be authorized in lieu of a twenty-one drop box. The organization may use a cash register at a site, in lieu of a twenty-one drop box, to account for gross proceeds only if the organization's use of a cash register meets the requirements of the attorney general. These requirements include all of the provisions of this chapter unless otherwise exempted, including:

1. The cash register must have the capability to issue consecutively numbered receipts containing at least the following information which must be provided to the player:
 - a. Name of the organization.
 - b. Date of the sale of the twenty-one chips.
 - c. Amount of currency paid for the twenty-one chips.
 - d. Consecutive customer receipt number.
2. The cash register must have at least a consecutive four-digit customer receipt number which does not return to zero at the conclusion of any period of use. Further, any cash register used must retain its transaction count between uses whether or not its power source is interrupted.
3. ~~It is recommended that the~~ The cash register must have sufficient keys to record each twenty-one chip denomination of each sale and provide a total for each denomination of sale recorded.
4. All cash register receipts for voids, underrings, overrings, no sales, and any other related receipts must be retained with the daily twenty-one records.
5. All transactions, customer receipt numbers, and control totals must be recorded on the tape retained in the cash register. The internal tape, showing these transactions, must be retained with the daily twenty-one records. If the cash register is used by the organization for purposes other than recording the receipts from twenty-one, the internal cash register tapes from the other uses must also be retained for at least three years.
6. A fill slip must be prepared by the chip bank cashier, pit boss, or site manager whenever twenty-one chips are transferred from the chip bank cashier to the twenty-one table.
7. The original copy of the fill slip must be retained by the chip bank cashier. The duplicate copy of the fill slip must be retained by the cash bank cashier.

- ~~7.~~ The original copy of the credit slip must be retained by the cash bank cashier.
8. A credit slip must be prepared by the cash bank cashier, pit boss, or site manager whenever twenty-one chips are returned from the twenty-one table to the chip bank cashier.
9. The original copy of the credit slip must be retained by the cash bank cashier. The duplicate copy of the credit slip must be retained by the chip bank cashier.
10. The organization shall sell twenty-one chips through the use of a cash register, by the chip bank cashier, who may not be the same person as the cash bank cashier.
- ~~10.~~ 11. The organization shall redeem its own chips by the cash bank cashier, who may not be the same person as the chip bank cashier. The chip redemption must be in accord with subsection 5 of section 10-04.1-10-10.
- ~~11.~~ 12. The organization is not required to determine the win and loss results for each table.
- ~~12.~~ 13. Written approval must be first obtained from the attorney general for use of a cash register which does not meet the requirements of this section but may contain adequate control features.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-13. Procedure for accounting for currency transactions at the twenty-one table in lieu of a two-member count team for counting the drop box cash - Use of a cash receipts/payout register. ~~It is recommended that an organization that has only one gaming employee or volunteer on duty use a cash receipts/payout register for accounting for currency transactions at the twenty-one table (see also section 10-04.1-10-21).~~ It is recommended that:

- ~~1.~~ The cash receipts/payout registers be serially prenumbered forms and be used in sequential order. The organization should account for all used and unused registers.
- ~~2.~~ A cash receipts/payout register should be completed each day, in ink, to account for all of the currency taken in on the sale of chips and for the cash paid out on chips redeemed during the twenty-one gaming activity. The register should contain at least the following information:
 - a. Name of the organization.

- b. Date of the gaming activity.
 - c. Name of the dealer.
 - d. Time span of the gaming activity.
 - e. Amount of currency taken in on the sale of the chips, by player.
 - f. Amount of cash paid out on the redemption of the chips, by player.
 - g. Amount of cash paid out on the redemption of tips (chips) by the dealer.
3. The dealer should record the amount of currency taken in on the sale of chips and cash paid out on chips redeemed on the register.
 4. When the player purchases chips, the player should either sign or initial, in ink, on the register to acknowledge the purchase of chips and evidence the amount of the drop box cash.
 5. When the player redeems chips, the player should legibly sign and write the player's driver's license number, in ink, on the register to acknowledge the redemption of chips and the player's identity. Only the player who actually purchased chips should redeem the player's chips. When the dealer redeems tips (chips), the dealer should legibly sign, in ink, on the register to acknowledge the redemption of chips.
 6. When the twenty-one gaming activity is concluded, the dealer should legibly sign or initial and date the register as a verification of the accuracy of the cash receipts/payout register.
 7. The drop box cash should not be counted by the dealer, rather, by a person who is an authorized agent of the bookkeeper or is independent of the bookkeeper. The key to the lock securing the contents of the drop box should be maintained and controlled by this person.
 8. If the drop box cash is counted by the dealer, the dealer should count the drop box cash and legibly sign or initial and date, in ink, the twenty-one drop box cash count report. This report along with the cash receipts/payout register should be forwarded to the bookkeeper.
 9. If the drop box cash is counted by a person who is an authorized agent of the bookkeeper or is independent of the bookkeeper, at least the following requirements should be met:

- a. The dealer should forward the cash receipts/payout register directly to the bookkeeper and in no instance should any of the information represented by the register be available to the person who actually counts the drop box cash.
 - b. The person who is an authorized agent of the bookkeeper or is independent of the bookkeeper should count the drop box cash and legibly sign or initial and date, in ink, the twenty-one drop box cash count report. This report should be forwarded to the bookkeeper.
- +0. The bookkeeper should verify the information provided by the cash receipts/payout register to that provided by the twenty-one drop box cash count report. Any variance should be explained in the organization's daily records.
 - +1. The responsibilities of the players as stated by this section should be posted on the site in a form that is clear and legible, and at a location that is easily visible to the players. Repealed effective June 1, 1990.

History: Effective November 1, 1986; amended effective October 1, 1987.
 General Authority: NDCC 53-06.1-17
 Law Implemented: NDCC 53-06.1-17

10-04.1-10-14. Number of players.

1. There ~~must~~ may be ~~one to no~~ more than seven players playing at the same table. A player may play two hands if there is a second betting space available and if the two hands are adjacent to each other at the same table. ~~However, a player must give up a second betting space if a nonplaying person requests that available space and no other betting space is available on that table or any other table at the site. No player may play more than two betting spaces.~~
2. No outsiders may wager on a player's hand.
3. No player may wager on another player's hand.

History: Effective November 1, 1986; amended effective June 1, 1990.
 General Authority: NDCC 53-06.1-17
 Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-14.1. Betting limits.

1. Each original wager must be one dollar, two dollars, three dollars, four dollars, or five dollars. A wager of at least one dollar must be accepted at each twenty-one table at each

gaming site. No organization may set a minimum wager for a table.

2. The organization may establish a maximum wager of either two dollars, three dollars, four dollars, or five dollars for each table at each gaming site. If all the twenty-one tables at a gaming site have the same betting limit, the betting limit must be posted in a legible manner in such a conspicuous location so that the player at a table can readily read the sign. If all the twenty-one tables at a gaming site do not have the same betting limit, a card or plaque must be located on top of the table indicating the minimum one dollar wager and the maximum wager for that table. Any wager made by a player that exceeds the table's maximum wager must be valued at the table's maximum wager and the excess wager must be returned to the player.
3. The organization shall provide the player with adequate notice of a change in the maximum wager at a twenty-one table and shall post and announce the change to the player. Adequate notice may be the actual time period of dealing out a whole dealing shoe.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-15. Shuffle and cut of the cards.

1. Immediately prior to commencement of play, and after each shoe of cards is dealt, the dealer shall, in front of the players, shuffle all ~~two hundred eight~~ the playing cards so that they are randomly intermixed. The dealer may use a mechanical device designed to automatically shuffle cards provided that the organization first submit the device and the written procedures for shuffling the cards through use of this device to the attorney general, and written approval is obtained from the attorney general.
2. After the cards have been shuffled, the dealer shall offer the stack of cards, with backs facing away from the dealer, to the players to be cut.
3. ~~It is recommended that the~~ The player designated by the dealer shall cut the cards by placing the cutting card in the stack at least ten cards in from either end to show where the cards are to be cut. ~~If~~ However, if the designated player or any other player refuses to cut the cards, ~~a representative of the organization~~ dealer or a pit boss shall cut the cards. The dealer shall rotate the opportunity to cut the cards among all the players.

4. ~~Once~~ After the cutting card has been inserted by the player or representative dealer, ~~it is recommended that~~ the dealer shall either take all the cards in front (towards the dealer) of the cutting card and place them to the back of the stack or take all the cards in back (away from the dealer) of the cutting card and the cutting card and place them to the front of the stack. The cutting card will then go to the bottom of the stack. The dealer shall then insert an indicator card in a position approximately fifty cards or up to one hundred cards from the bottom of the stack. The stack of cards must then be inserted into the dealing shoe facedown for commencement of play.
5. When the indicator card inserted by the dealer makes its appearance at the face of the shoe and enough cards have been dealt to complete the hand in progress, the deal ends and the dealer must shall begin a new shuffle and again repeat the procedure described by this section.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-16. Betting.

1. ~~Each original wager must either be one dollar or two dollars in the form of chips. A wager of one dollar must be accepted at each table.~~ The original wager is the amount bet per hand and is exclusive of splitting, doubling-down, insuring, and tip betting. The original wager for each hand is made by placing a chip inside a betting space provided on the playing surface before the first card is dealt. Once the first card has been dealt to a betting space, the original wager may not be altered by any player. No more than one player may place a wager on one betting space.
2. Each separate wager must ~~either be one dollar or two dollars~~ equal the original wager, except a tip bet which may not exceed two dollars range from fifty cents to five dollars, and insurance bets which must be either fifty cents or one dollar equal one-half of the original wager. All wagers must be in the form of chips. Each split or double-down is a separate wager ~~limited to the amount of which must equal the original wager which may not exceed two dollars.~~ Each insurance bet is a separate wager equal to one-half of the original wager.
3. Splitting is permitted as follows:
 - a. On any pair or any two 10-count value cards.
 - b. When splitting, the player is allowed a maximum of four hands per betting space. The player's right-hand card in

the split must be played to completion before the adjacent split hand is dealt a second card. The player ~~must~~ shall take at least one card on each split hand.

- c. The wager on each hand must equal the player's wager on the player's original hand.
 - d. Split aces draw only one card each. Aces may not be resplit.
 - e. A two-card twenty-one after a split is not a natural twenty-one.
4. Doubling-down is permitted as follows:
- a. On the first two cards dealt to a betting space or the first two cards of any split hand, except on split aces.
 - b. The additional wager must equal the original wager on that hand.
 - c. One additional card must be dealt to a hand on which a player has elected to double-down. No more than one additional card may be dealt to the hand.
5. The eligible organization may determine whether or not to permit insurance betting. That determination must be posted. Insurance betting is permitted as follows:
- a. The insurance bet is placed when the dealer's faceup card is an ace.
 - b. The ~~player's wager~~ insurance bet must be half the player's original wager on the player's own hand.
 - c. There may be no insurance bet on a tip wager.
6. The eligible organization may determine whether or not to permit tip betting. That determination must be posted. Tip betting does not preclude the player from awarding the dealer a regular tip. The wager for a tip bet is made by placing a chip outside the betting space, but with the chips touching the lower left edge of the betting space, from the dealer's perspective, on the playing surface before the first card is dealt. Tip betting is permitted as follows:
- a. The tip bet is made by the player at the time the player makes the original wager.
 - b. Each betting space is limited to one tip bet regardless of splitting.

- c. The tip bet does not have to equal the player's original wager. The tip bet ~~must be either~~ may range from fifty cents, one dollar, one dollar and fifty cents, or two to five dollars.
 - d. The tip bet may not be increased beyond its original amount. It cannot be doubled-down.
 - e. There may be no insurance wager on a tip bet.
 - f. On a split hand, the tip bet is assigned to the specific split hand located at the foremost left of the player, from the dealer's perspective.
 - g. The payoff on all tip bets must be one-to-one regardless if the player has a natural twenty-one.
 - h. If a player's hand wins, the tip bet is paid off at an equal amount and the tip bet and the payoff ~~become the possession of the dealer~~ are placed in the tip receptacle. If the dealer's hand wins, the tip bet becomes the possession of the organization. If a player's hand ties the dealer's hand, the tip bet is a standoff (push) and the player may either take back the tip bet or leave the tip bet on the playing surface for the next round of play.
7. If a player places an original or separate wager, or both, consisting of two or more different denominations of twenty-one chips, the player shall position the highest denomination chip on bottom and the smallest denomination chip on top of the player's wager which must be in a stacked form. If a player improperly positions the chips, the dealer shall tell the player of the violation and either the dealer or player shall reposition the chips correctly. The dealer may demonstrate to the player how the player must stack the chips.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-17. The deal.

- 1. All cards used to play ~~at~~ twenty-one must be dealt from a dealing shoe specifically designed for ~~such~~ that purpose and located on the table to the immediate left of the dealer, from the dealer's perspective.
- 2. ~~After each stack of cards is~~ If a double-dealing shoe is not used, after all the playing cards have been shuffled and placed in the dealing shoe, the dealer shall remove the first card ~~therefrom~~ face downwards and place it in the discard

holder without showing its face value. The discard holder must be located on the twenty-one table to the immediate right of the dealer, from the dealer's perspective. Each new dealer who comes to the twenty-one table shall also burn one card as described herein before the new dealer deals any cards to the players.

3. If a double-dealing shoe is used, immediately prior to the commencement of play and after all the playing cards have been shuffled and placed in the dealing shoe, the dealer shall draw a card from either side of the dealing shoe. The suit of that card must determine from which side of the shoe the playing cards will be dealt from first. The organization shall designate that the suits of hearts and diamonds shall correspond to the cards dealt from one side of the shoe and that the suits of spades and clubs shall correspond to the cards dealt from the other side of the shoe. The dealer shall show the determinant card to the players at the twenty-one table and then place it face downwards in the discard holder. Then, the dealer shall remove the first card face downwards and place it in the discard holder without showing its face value. The discard holder must be located on the twenty-one table to the immediate right of the dealer, from the dealer's perspective. Each new dealer who comes to the twenty-one table shall also burn one card as described herein before the new dealer deals any cards to the players.
4. Either of the following methods must be consistently used for the deal of twenty-one at any twenty-one table:
 - a. Hole-card-no-peek method of dealing. The dealer may not look at the face of the dealer's hole card until after all other cards requested by the players, pursuant to ~~these rules~~ this chapter, are dealt to them. The cards must be dealt in the following order:
 - (1) One card face upwards to each betting space on the playing surface in which a wager is contained.
 - (2) One card either face upwards or face downwards (hole card) to the dealer.
 - (3) A second card face upwards to each betting space in which a wager is contained.
 - (4) A second card face upwards to the dealer if the card referenced in paragraph 2 was dealt face downwards; or, a second card face downwards (hole card) to the dealer if the card referenced in paragraph 2 was dealt face upwards.
 - b. No-hole-card method of dealing. The dealer may not deal a second card (hole card) to the dealer until

after all other cards requested by the players, pursuant to ~~these rules~~ this chapter, are dealt to them. The cards must be dealt in the following order:

(1) One card face upwards to each betting space on the playing surface in which a wager is contained.

(2) One card face upwards to the dealer.

(3) A second card face upwards to each betting space in which a wager is contained.

(4) No second card is dealt to the dealer. See subsection 10 of section 10-04.1-10-18.

~~4.~~ 5. At the commencement of each round of play, the dealer shall, starting on the dealer's left and continuing around the table, deal the cards according to the prescribed methods. Each dealer shall remove cards from the dealing shoe with the dealer's left hand, turn them face upwards, and then, it is recommended, place them on the appropriate area of the playing surface with the dealer's right hand; however, and that the dealer have the option to may deal cards to the first two betting spaces with the dealer's left hand. A player's second card and any hit card should must be placed on top of the preceding card covering approximately the lower left-hand quarter of the preceding card, from the dealer's perspective. Exceptions to this recommended rule would apply to a handicapped dealer and an organization that establishes a standard procedure for use by all the twenty-one dealers at the site.

~~5.~~ At the commencement of each round of play, or immediately after the first card has been drawn and either burned or used as the player's first card, the dealer shall, starting on the dealer's left and continuing around the table, deal the cards according to either of the two prescribed methods of dealing subsection 3.

~~a.~~ Hole card no peek method of dealing. The cards must be dealt in the following order:

~~(1)~~ One card face upwards to each betting space on the layout or diagram in which a wager is contained.

~~(2)~~ One card either face upwards or face downwards (hole card) to the dealer.

~~(3)~~ A second card face upwards to each betting space in which a wager is contained.

(4) A second card face upwards to the dealer if the card referenced in paragraph 2 was dealt face downwards; or, a second card face downwards (hole card) to the dealer if the card referenced in paragraph 2 was dealt face upwards.

b. ~~No hole-card method of dealing.~~ The cards must be dealt in the following order:

(1) One card face upwards to each betting space on the playing surface in which a wager is contained.

(2) One card face upwards to the dealer.

(3) A second card face upwards to each betting space in which a wager is contained.

(4) No second card is dealt to the dealer. See subsection 10 of section 10-04.1-10-18.

6. Throughout the deal, no dealer may allow any player to touch any cards on the twenty-one table and no player may touch any cards on the table.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-18. The play.

1. After the first two cards have been dealt to each betting space in which a wager is contained, and the dealer's faceup card is an ace, the dealer ~~must~~ shall ask the players if they desire to make an insurance bet. ~~It is recommended that if~~ If a player does desire to make an insurance bet, the player ~~should~~ shall place a chip on the "insurance" line on the playing surface. The dealer ~~should~~ shall then reposition the chip on the playing surface at a location below the lower right-hand corner of the first card dealt and to the immediate right of the second card dealt, from the dealer's perspective. When the chips have been placed or repositioned, the dealer ~~should~~ shall announce "insurance bets are closed". However, this ~~particular~~ rule is not applicable to an organization that does not permit insurance betting.
2. The dealer shall announce, beginning from the dealer's left, the point total of each player's hand. ~~It is recommended that~~ as As each player's hand point total is announced, ~~such~~ the player ~~should~~ shall indicate whether the player desires to split or double-down, or both, by properly placing a chip as follows:

- a. ~~It is recommended that a~~ A wager for a split must be made by placing a chip beside and horizontal to the original wager on that hand on the playing surface.
 - b. ~~It is recommended that a~~ A wager for a double-down bet must be made by placing a chip behind and vertical to the original wager on that hand on the playing surface.
 - c. ~~It is recommended that, if~~ If the dealer is unsure of the player's intent to either split or double-down due to an improper chip placement by the player, the dealer ~~should~~ shall ask the player whether the player desires to split or double-down. Based on the player's response, the dealer ~~should~~ shall properly ~~position~~ reposition the chip accordingly.
3. If a player has split or doubled-down, or both, the dealer shall play each hand as follows:
 - a. When a player places a wager for a split, the cards must be split by the dealer, not the player, side by side. If such a player has also placed a tip bet, the dealer shall assign the tip bet and reposition the tip bet on the playing surface to the specific split hand located at the foremost left of the player, from the dealer's perspective. Each split hand must be played separately starting with the specific split hand located at the foremost left of the player, from the dealer's perspective. If aces are split, only one additional card ~~shall~~ must be dealt to each of the two split hands. ~~In such circumstances, it is recommended that the~~ The one additional card must be dealt face upwards and placed on the playing surface at a right angle to the first card dealt.
 - b. Each doubled-down hand must be dealt one additional card. ~~It is recommended that the~~ The one additional card must be dealt face upwards and either placed on the playing surface at a right angle to the first two cards dealt or placed beneath the chip of the player's original wager.
 4. The dealer may not take any hit card from the dealing shoe for a player until the player has first indicated the player's request for a hit card by hand signal, nor may the dealer bypass a player unless the player has first indicated the player's request to stand by hand signal.
 5. The player shall indicate whether the player desires to stand, or draw a hit card, by hand signal. Hit cards are dealt only to players indicating their request by hand signal - vertical motion toward themselves. Likewise, players must shall indicate their intention to stand by hand signal - horizontal motion away from themselves.

6. As each player indicates the player's decision to stand or draw a hit card on hands other than split aces or double-down, the dealer shall deal face upwards (see subsection 4 5 of section 10-04.1-10-17) whatever additional cards are necessary to effectuate such that decision consistent with this chapter and shall announce the new point total of such the player's hand after each additional card is dealt. It is recommended that each Each player at the twenty-one table be is responsible for correctly computing the point total of the player's hand and no player should rely on the point total required to be announced by the dealer under this section without the player checking the accuracy of such that announcement.
7. If a player did not split, did not double-down, not or place an insurance bet, and busts, that is, the player's count in the course of being dealt cards exceeds a count of twenty-one, the player loses the player's original wager and any tip bet, regardless of the value of the dealer's faceup card. The dealer must shall then immediately collect the player's chips, including any tip bet, and cards, and place the chips in the chip tray and the cards in the discard holder.
8. If the dealer's faceup card is not an ace or a ten-count card and a player did split or double-down and busts, the player loses the player's wager for that split or double-down hand and any tip bet assigned to it. The dealer must shall then immediately collect the player's chips, including any tip bet, and cards, and place the chips in the chip tray and the cards in the discard holder.
9. If the dealer's faceup card is an ace or a ten-count card and a player did split, double-down, or place an insurance bet and busts, the dealer shall then gather the player's cards of that hand and place them in the betting space under the player's wagered chips which must be kept in the same betting position. Any tip bet for such a split or double-down hand that busts is lost. The dealer must shall immediately collect the tip bet chips and place the chips in the chip tray.
- 9.1. If the dealer's faceup card is not an ace or a ten-count card and all players busted, regardless whether a player did split or double-down, the dealer may, at the organization's option, immediately end the round. The dealer does not need to either turn up the dealer's facedown card (hole-card-no-peek method), deal a second card face upwards to the dealer (no-hole-card method), or draw any hit cards. The organization's option must be consistently used at a gaming site.
- 9.2. If the dealer's faceup card is an ace or a ten-count card and all players busted, and no player split, doubled-down, or placed an insurance wager, the dealer may, at the organization's option, immediately end the round. The dealer

does not need to either turn up the dealer's facedown card (hole-card-no-peek method), deal a second card face upwards to the dealer (no-hole-card method), or draw any hit cards. The organization's option must be consistently used at a gaming site.

10. After If the decisions of each player have been implemented, all additional hit cards have been dealt, and the player's chips and cards of certain busted hands properly positioned according to subsection 9, and the provisions of subsection 9.1 or 9.2 do not apply, the dealer shall either turn up the dealer's facedown card (hole-card-no-peek method) or deal a second card face upwards to the dealer, provided, however, that such that card must not be removed from the dealing shoe until the dealer has first announced "dealer's card" (no-hole-card method). The dealer shall play the dealer's hand as follows:
 - a. If the dealer's faceup card is an ace and the dealer's hand is not a natural twenty-one (blackjack), the dealer must shall immediately collect all of the players' insurance bet chips and place the chips in the chip tray. Then the dealer must shall immediately collect all of the players' busted hands and related chips and place the chips in the chip tray and the cards in the discard holder.
 - b. If the dealer's faceup card is a ten-count card and the dealer's hand is not a natural twenty-one (blackjack), the dealer must shall immediately collect all of the players' busted hands and related chips and place the chips in the chip tray and the cards in the discard holder.
 - c. If the dealer's faceup card is an ace and the dealer's hand is a natural twenty-one (blackjack) and a player has insured the player's hand pursuant to subsection 5 of section 10-04.1-10-16, the player wins the insurance wager at the rate of two to one.
 - d. If the dealer's faceup card is an ace or a ten-count card and the dealer's hand is a natural twenty-one (blackjack), the dealer wins all original wagers and tip bets (organization wins the tip bet), unless a player's original hand also is a natural twenty-one, in which case a standoff exists between the dealer's hand and that player's hand. All other players lose.
 - e. If a player has doubled-down or split against the dealer's faceup card of an ace or a ten-count card and the dealer's hand is a natural twenty-one (blackjack), only the amount of the player's original wager is lost. All separate wagers resulting from splitting and doubling-down are

voided and the dealer ~~must~~ shall return the players' separately wagered chips to the players.

- ~~e.~~ f. If the count of the dealer's hand is sixteen or under, the dealer ~~must~~ shall draw a hit card until such time as the count exceeds sixteen. ~~It is recommended that any~~ Any additional cards authorized to be dealt to the hand of the dealer must be dealt face upwards to the immediate right of the dealer's first two cards dealt, from the dealer's perspective, and the dealer shall announce the total point count.
- ~~f.~~ g. If the count of the dealer's hand exceeds sixteen but does not exceed twenty-one, the dealer ~~must~~ shall stay, that is, the dealer's hand has ended. If the dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, twenty, or twenty-one can be obtained by including the ace as an eleven, the dealer shall value the dealer's hand as such and ~~must~~ shall then stay.
- ~~g.~~ h. If the dealer's hand busts, the remaining players with active hands win their wagers.
11. If a player's original hand is a natural twenty-one (blackjack) and the dealer's faceup card is not an ace or a ten-count card, the player's hand wins and is paid off at a rate of three to two, unless the player chooses to double-down. The dealer's chip payoff on the player's wager may occur either immediately or when the dealer compares the count of each player's hand with the dealer's hand. If the dealer's faceup card is an ace or a ten-count card, the player's natural twenty-one is not paid off until the dealer determines that the dealer does not have a natural twenty-one. Then, the dealer's chip payoff on the player's wager may occur either immediately or when the dealer compares the count of each player's hand with the dealer's hand.
12. Wagers are won or lost on an individual hand basis by comparing the count of each player's hand with the dealer's hand. The dealer wins if the count of the dealer's hand exceeds the count of the player's hand. If the count of the dealer's hand is less than the count of the player's hand, the player wins. Wagers are paid off at an equal amount, including tip bets. All ties are a standoff (push), that is, no payoff is made, including tip bets.
13. If the player's hand loses against the dealer's hand, the organization wins the tip bet. The dealer ~~must~~ shall immediately collect the player's chips, including any tip bet, and cards and place the chips in the chip tray and the cards in the discard holder.

14. If the player's hand wins against the dealer's hand and the player placed a tip bet, the dealer wins the tip bet and the one-to-one payoff from the chip tray. The dealer then shall reposition the tip bet in the inner table area. The winning tip bets repositioned in this inner area are not to be stacked.
15. If the player's hand wins against the dealer's hand, ~~it is recommended that~~ the dealer shall make the chip payoff of the ~~players'~~ player's winning ~~wagers~~ wager as follows:
- a. Normal hand payoff - The chip ~~should~~ must be placed beside the original wager in the betting space. The chip ~~should~~ may not be placed on top of the original wager.
 - b. Split hand payoff - The chip ~~should~~ must be placed beside the wager in the betting space. The chip ~~should~~ may not be placed on top of the wager.
 - c. Double-down hand payoff - The chips ~~should~~ must be placed beside the two wagered chips in the betting space. The chips ~~should~~ may not be placed on top of the wager.
 - d. Insurance bet payoff - The chip ~~should~~ must be first placed beside the insurance bet, then placed on top of the insurance bet and ~~both~~ the chips pushed in front of the player.
 - e. Tip bet payoff - The chip ~~should~~ must be placed beside the tip bet. However, a winning tip bet must be placed in the inner table area prior to the dealer placing the winning wager in the dealer's tip receptacle.
 - f. Natural twenty-one (blackjack) payoff - The chips ~~should~~ must be pyramided with the higher denomination chip placed beside the wager in the betting space and the smaller denomination chip placed on top over the center of the other two chips.
16. ~~It is recommended that at~~ At the conclusion of a round of play, all cards still remaining on the playing surface must be picked up by the dealer in order and in such a way that they can be readily ~~rearranged~~ played back to indicate each player's hand in case of question or dispute. The dealer ~~should~~ shall pick up the cards beginning with those of the player to the dealer's far right and moving counterclockwise around the table. After all the players' cards have been collected, the dealer ~~should~~ shall pick up the dealer's cards against the top of the players' cards and place them in the discard holder face downwards.

17. Throughout the play, no dealer may allow any player to touch any card on the twenty-one table and no player may touch any card on the table.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10-18.1. Dealing mistakes. Unless the organization has a written policy governing particular dealing mistakes, the following procedures must be applied for the stated dealing mistakes:

1. A playing card found turned face upwards in the dealing shoe must not be used in the round and must be placed in the discard holder.
2. If no cards are dealt to a player's betting space, the betting space is inactive and the player must be included in the next round. If only one card is dealt to a player's betting space, at the player's option, the dealer shall deal the second card to the player after all other players have received a second card. Otherwise, the player's betting space is inactive and the card dealt must be burned.
3. If the dealer inadvertently deals one or two cards to an inactive betting space and the dealer has continued dealing cards to the players' active betting spaces, the dealer shall burn the cards dealt to the inactive betting space.
4. If the dealer misses dealing the dealer's first or second card to the dealer, the dealer shall continue dealing the first two cards to each player, and then deal the appropriate number of cards to the dealer.
5. If the dealer inadvertently does not ask the player if the player desires to place an insurance wager and the hand is played, the hand is valid.
6. If the dealer inadvertently drops a card off the table and the card's face is exposed or unexposed, the dealer shall burn the card.
7. A playing card drawn from the dealing shoe in error without the card's face being exposed to any player must be used as though it were the next card from the shoe.
8. After the initial two cards are dealt to each player and a card is drawn from the dealing shoe in error, such as when a player changes the player's mind about taking a hit card, with the card's face unintentionally exposed to any player, the card must be dealt to the player or dealer as though it were

- the next card from the dealing shoe. Any player refusing to accept the card may not have any additional cards dealt to the player during the round. If the card is refused by all the players and the dealer cannot use the card without busting, the card must be burned.
9. If there are an insufficient number of cards remaining in the dealing shoe to complete a round of play, all of the cards in the discard holder must be shuffled and cut according to the procedures outlined in section 10-04.1-10-15, the first card must be drawn face downwards and burned, and the dealer shall complete the round of play.
 10. If the dealer has a count of at least seventeen and accidentally draws a card for the dealer, the card must be burned.
 11. If a dealer inadvertently permits a player to wager an amount other than one dollar, two dollars, three dollars, four dollars, or five dollars and the player's hand wins against the dealer's hand, the dealer shall return the uneven portion of the player's wager to the player. Then, the dealer shall value the player's hand at the proper wager and pay off accordingly.
 12. After a round of play, if the dealer or player suspects that the dealer miscounted the dealer's or player's hand, the dealer shall play back the dealer's and player's playing cards to resolve the question or dispute.

History: Effective June 1, 1990.
 General Authority: NDCC 53-06.1-17
 Law Implemented: NDCC 53-06.1-17

10-04.1-10-19. Posting of rules. The following rules must be posted in a clear, legible manner at each twenty-one table or in such a conspicuous location so that the player at a twenty-one table can readily read ~~such~~ the rules.

HOUSE MUST

- Use 4, 6, or 8 complete decks of cards ~~(208 cards)~~
- Use last hand indicator card
- Use Hole-Card-No-Peek method of dealing
- or -
- Use No-Hole-Card method of dealing
- Deal from a shoe

PLAYER RULES

- Must be twenty-one years of age or older
- Hand signals must be used
- No touching of cards
- Two ~~hands~~ betting spaces maximum

~~\$1.00~~ or ~~\$2.00~~ wagers only
No side bets
No credit
No payoff on tie counts
Splitting on any pair and any two 10-count
value cards and limited to a maximum
of 4 hands per betting space
Doubling-down on the first 2 cards dealt
or the first 2 cards of any split
hand, except on split aces

Insurance not permitted (Choose one when posting)
- or -
Insurance permitted - pays 2 to 1

Tip betting permitted (Choose one when posting)
- or -
Tip betting not permitted

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-07, 53-06.1-10, 53-06.1-17

10-04.1-10-20. Twenty-one drop box - Transportation from the
twenty-one table and storage.

1. Unless the drop box cash is counted immediately when the drop box is removed from the twenty-one table, the drop box removed must be transported by the pit boss or site manager and, ~~it is recommended,~~ escorted by the cash bank cashier, directly to and secured in a safe storage place. However, this subsection does not apply if there is only one gaming employee scheduled on duty.
2. The drop box, when not in use during a shift, may be stored on the twenty-one table provided that there is adequate security. If adequate security is not provided during ~~this time a shift,~~ the drop box must be stored in a safe storage place. The organization shall exercise appropriate key control to the safe storage place to restrict access to only authorized gaming employees.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10-21. Drop box cash count by a ~~two member~~ two-person
count team.

1. Except for organizations whose total actual gross proceeds for the previous fiscal year's four quarters, for which gaming tax

returns were filed, averaged twenty-five thousand dollars or less per quarter, the The drop box is to must be opened by at least a two-member two-person count team. For those organizations at or below twenty-five thousand dollars per quarter, it is recommended that the method in section ~~10-04.1-10-13~~ be utilized. For the two-member The two-person count team, it is recommended that the count team must consist of at least one member person who is from the organization's accounting department or either an authorized agent of the accounting department organization's bookkeeper or is independent of the bookkeeper and a second member person who is either a gaming employee or volunteer or a nongaming person.

2. The key utilized to unlock the drop box from the twenty-one table must be maintained and controlled by the site manager or pit boss. It is recommended that the The key to one lock securing the contents of the drop box must be maintained and controlled by a member of the accounting department or an authorized agent of the accounting department organization's bookkeeper or is independent of the bookkeeper. If there are two separate locks which secure the contents of the drop box, it is recommended that the key to the second lock securing the contents of the drop box must be maintained and controlled by a gaming employee or volunteer.
3. The organization shall maintain daily records as provided by subdivisions c and d of subsection 2 of section 10-04.1-10-22.
- ~~4.~~ The two-member Each person of the two-person count team shall independently count the drop box cash in the immediate presence of the other person, reconcile any difference between the two counts, record the count, and legibly sign or initial and date in ink, the twenty-one drop box cash count report. This report must be forwarded directly to the bookkeeper.
4. This section does not apply to a gaming site that has only one gaming employee or volunteer continually scheduled on duty at that site or an organization that contracts with a financial institution or a licensed and bonded provider of security or security agency to count the drop box cash directly from the drop box. No organization may contract with a licensed and bonded provider of security or security agency unless the attorney general has first approved the written procedures for the drop box cash count of the licensed provider of security or security agency.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-21.1. Tournaments. In addition to the other requirements of this chapter the organizations shall comply with at least the requirements in this section in the conduct of any twenty-one tournament and the organization shall conspicuously post these requirements on the site during the tournament.

1. The provisions of North Dakota Century Code section 53-06.1-10 and chapter 10-04.1-10 apply to the tournament.
2. A player shall register with the organization before participating.
3. The organization shall set a minimum player buy-in amount.
4. The organization may assign each player the player's betting space and may limit each player to one betting space.
5. A player may not move from table to table or temporarily or permanently stop playing unless permission is granted by the organization.
6. A player may not transfer the player's chips to or from another player.
7. A player shall play with only the chips issued by the organization for tournament play.
8. A player shall keep the player's chips on top of the twenty-one table in view of the dealer.
9. A player may not cash out prior to the conclusion of play scheduled for the player unless the player desires to withdraw from the tournament.
10. A player's score is calculated as the difference between the value of the player's buy-in and the value of the player's chips redeemed at the conclusion of play.
11. The organization shall post all the players' scores at the conclusion of either each day's activity or the tournament.
12. The player with the highest score based either on preliminary rounds or a championship round is the champion.
13. The organization's decision regarding any disputes is final.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10-21.2. Organization prohibited or restricted in the conduct of twenty-one. The attorney general may prohibit an

organization from conducting twenty-one, or may require an organization to comply with certain restrictions, including maintaining a record of dealers' tips, pooling of tips, and use of a triple-locking drop box, for conducting twenty-one at any site if the attorney general determines that the organization's twenty-one activity at that site is not adequately controlled, not in the public interest, or not a fair and honest game. The attorney general's determination may be based on analytical procedures or substantiated allegations of players, gaming employees or volunteers, or local law enforcement officials.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10-22. Recordkeeping system required.

1. A licensed organization shall retain daily accounting records with regard to twenty-one for a period of three years from the end of the quarter for in which the records are kept twenty-one activity occurred unless the organization is released by the attorney general from this requirement. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each day of twenty-one gaming activity:
 - a. Records documenting the starting and ending twenty-one cash bank and chip bank. It is recommended that the The count must be recorded by each denomination of currency and twenty-one chip. Unless there is only one gaming employee or volunteer scheduled on duty, the count of the cash bank and chip bank must be verified by at least two persons who shall sign or initial such and date that verification.
 - b. Fill slips and credit slips containing verifying signatures or initials must document the transfer of twenty-one chips between the chip bank cashier and the twenty-one table.
 - c. Records providing sufficient detail to determine the documenting the twenty-one activity of each table, including fill slips, credit slips, and a summary for all tables. The records must include at least the serial number and amount of each fill slip and credit slip, amount of currency, by denomination, in the drop box or cash register. These records must include, and, unless exempted by subsection 12 of section 10-04.1-10-12, win and loss results for each table, unless exempted by subsection 11 of section 10-04.1-10-12.

- d. C. Records providing a reconciliation, by site, (summary) of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
3. All daily activity records must be completed by use of a nonerasable ink pen, and be legibly signed or initialed and dated by the person completing each record.
4. A twenty-one chip master inventory control log and site inventory control log must be maintained to record additions and reductions of the twenty-one chip inventories at the home office and at a site. The logs must at least record the dates the chips are added to and reduced from the home office chip inventory, and the dates the chips are added to and reduced from the site chip inventory, by denomination of twenty-one chip. The organization shall, on at least a quarterly basis, compare its inventory control logs of twenty-one chips that are recorded as being at the home office and site to twenty-one chips that are actually in inventory at the home office and site. The organization shall document the reconciliation in writing and reconcile any differences. The reconciliation must be performed by a person who is independent of the person who has custody of the physical inventory of the chips.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10-23. Actual cash profit bank deposit required by licensed organizations. For twenty-one, the actual cash profit, less the increase or plus the decrease in the starting cash bank for the next day's activity, must be deposited intact in the organization's general gaming bank account no later than the fifth banking day following the day of play. If the organization prepares a deposit slip for the deposit of actual cash profit from only one day's twenty-one activity, the validated bank deposit slip or receipt must contain a reference to twenty-one, date of the twenty-one activity, deposit amount, and be included as part of the daily accounting records of that day's twenty-one activity. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one day's twenty-one activity or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-06-15 (bingo), 10-04.1-07-10 (raffles), 10-04.1-08-11 (charitable gaming tickets and punchboards), 10-04.1-09-04 (professional sports pools), and 10-04.1-10.1-25 (poker), and 10-04.1-10.2-06 (calcuttas). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting

schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-01. Poker. Poker is a card game played by a minimum of two players and a maximum of ten players. Poker is dealt by one dealer on a poker table. A player bets on the cards (hand) the player holds. All the bets placed by the players are collected together in the center of the table which is known as the pot. There is an initial ante round. There may be a blind bet by the players. Then, after the players receive their starting cards, there is a betting round and, after each round of new cards, there is a betting round. Each round, the player decides whether to continue contending for the pot by calling or raising the bet to the player. After all the dealing of cards and betting has occurred for a pot and there are two or more players still in contention, there is a showdown to determine which player has the best hand. The object of the game is for a player to win the pot either by making a bet no other player is willing to match, or by the player having the most valuable hand after all the betting is over, as determined by classifying hands into categories ranked according to subsection 2 of section 10-04.1-10.1-04. Based on the type of poker game played, the winning player may be the player who holds the hand of highest rank, lowest rank, or divided between the highest and lowest ranking hands.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-17

10-04.1-10.1-02. Limitations and fees.

1. The organization must first be separately licensed as a class A or class B organization.
2. The organization shall conduct the game of poker on not more than two occasions per year after receiving a class E license (see subsection 1.1 of section 10-04.1-03-01).
3. For tournament play, the organization ~~must~~ shall:
 - a. Provide the dealer.
 - b. Use ~~poker~~ denomination chips.
 - c. Charge the player either a fixed fee of ten dollars or rake two percent of the pot in each game in accordance

with subdivision b of subsection 5 of section
~~10-04.1-10.1-02.~~

- ~~d.~~ Follow the administrative rules applied to tournament play.
4. For nontournament play, the organization:
- a. Is not restricted to those types of poker games authorized by section 10-04.1-10.1-03. The organization may play any variation of poker.
 - b. When providing the dealer, ~~must:~~
 - ~~(1)~~ Charge the player either a fixed fee of ten dollars or rake two percent of the pot in each game.
 - ~~(2)~~ Follow shall follow the administrative rules applied to tournament play.
 - c. When not providing the dealer, ~~must~~ shall:
 - (1) Either charge the player a fixed fee of ten dollars or ensure that the rake of each pot is done in accordance with subdivision b of subsection 5 of section ~~10-04.1-10.1-02.~~
 - ~~(2)~~ Have the players use cash for betting purposes.
 - ~~(3)~~ (2) Ensure that the players are complying with all applicable provisions of the law and administrative rules this article or North Dakota Century Code chapter 53-06.1.
 - ~~d.~~ Is recommended to follow the administrative rules applied to tournament play.
5. ~~An~~ For tournament and nontournament play, the organization shall charge a player to play in a game of poker either:
- a. ~~Ten dollars.~~ However, if a player voluntarily relinquishes his seat at a poker table, other than either taking a temporary leave not exceeding a period of one hour or moving to another table as asked by the organization, that player may be charged another ten dollars by the organization should that player desire to again participate in the game of poker on that site. The organization may establish a more restrictive policy than the one-hour period (for example, fifteen minutes) and may terminate the player for excessive breaks. The fee schedule applicable to poker must be conspicuously posted on the site where it can be clearly seen by the poker players. Charge each player a fee not to exceed two

dollars per half hour of playing time by that player, collected in advance of the one-half hour interval. The fee may either be fifty cents, one dollar, one dollar and fifty cents, or two dollars for each one-half hour of playing time. For tournament play, the organization may also charge each participating player a fixed entry fee not to exceed one hundred dollars. No player may play for free. The organization's fee schedule, applicable to the type of play, tournament or nontournament, must be posted on the gaming site where it can be clearly seen by the players.

- b. Two percent of the pot in each game if that game has a pot of at least ten dollars. However, for a game with a pot of less than ten dollars, a charge by the organization to the pot may be at the discretion of the organization. The rake may be:

POT VALUE	RAKE
Less than \$10.00	optional
\$10.00 - \$15.00	.25
\$15.05 - \$35.00	.50
\$35.05 - \$50.00	.75
Greater than \$50.00	1.00

The fee collected at the one-half hour interval must be immediately recorded by the organization.

6. The ante must be either five cents, ten cents, twenty-five cents, fifty cents, or one dollar per person per hand. No dealer or player may ante for any other player. The organization may, at its discretion, establish a minimum ante at any table or game.
7. For each round of bets, there may be no more than a total of three raises made among all the players. Each raise may be either five cents, ten cents, twenty-five cents, fifty cents, or one dollar; however, each raise must be equal to or greater than the original bet but cannot exceed one dollar.
8. A blind bet may be allowed at the organization's option.
9. The organization may set minimum table limits.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.2, 53-06.1-17

10-04.1-10.1-05. Poker cards - Physical characteristics —
Tournaments only.

1. The cards used in the game of poker must be one complete standard deck of fifty-two cards. However, a joker may be used in particular **authorized** types of poker.
2. The design on the backs of each card in the deck must be identical and no card may contain any marking, symbol, or design that will enable a player to know the identity of any element printed on the face of the card or that will in any way differentiate the back of that card from any other card in the deck. The backs of the cards may contain a logo.
3. The backs of all cards in the deck must be designed so as to diminish, as far as possible, the ability of any person to place concealed markings thereon.
4. No organization may use cards that are taped, defaced, bent, crimped, or deformed in any other manner.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-06. Poker chips - Value and physical characteristics

~~Tournaments only.~~

1. Each denomination poker chip issued by an organization must be round in shape and clearly and permanently impressed, engraved, or imprinted on one side with the specific value of the chip and **may at its discretion** on the other side of the chip have the organization's name represented by a **related** design, symbol, abbreviation, or other identification which would differentiate the organization's chips from those being used by every other organization.
2. ~~Poker~~ Denomination poker chips must be issued by an organization in denominations of only five cents, ten cents, twenty-five cents, fifty cents, **and or** one dollar.
3. Each denomination of a poker chip must have a different primary color from the other denominations of chips. Each organization may, at its discretion, utilize contrasting secondary colors for any inlays on each denomination of poker chip.
4. Poker chips must be designed so as to prevent to the greatest extent possible the counterfeiting of **such** those chips.
5. An organization may use twenty-one chips.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10.1-08. Persons not to bring their own cards or poker chips. No person may bring onto a gaming site, ~~nor~~ or introduce into any poker game, any playing card ~~or cards~~, ~~nor~~ or any poker chip ~~or chips~~ for use in wagering other than those obtained from the organization.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-11. Number of players - Tournaments only.

1. There must be two to ten players per table.
2. No outsiders may wager on a player's hand.
3. No player may wager on another player's hand.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10.1-16. Shuffle and cut of the cards.

1. Immediately prior to commencement of play of each game, the dealer shall, in front of the players, shuffle all fifty-two or fifty-three (including the joker) cards so that they are randomly intermixed.
2. If the organization provides the dealer, the dealer shall cut the cards. The dealer shall restack the cards with the former bottom part of the deck on top. Then, the dealer shall place a cutting card on the bottom of the deck to conceal the last card which ~~shall~~ must never be dealt.
3. The dealer, at least once per hour, shall count the cards in the deck ~~and sort them on the table~~ to verify that the deck is complete.
4. The dealer, at least once every two hours, shall change the deck of cards.
5. The organization shall have two separate decks of cards available at each table. The color of the backs of the cards of the two decks must be a different predominate color. Any player may request that the dealer change decks. If such a request is made, the dealer shall switch the use of decks at the end of that hand.
6. When the two separate decks of cards have been used, the organization shall replace the used decks with a new set of two separate decks of cards.

History: Effective October 1, 1987; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-17. Ante.

1. If there is an ante, the ante must either be five cents, ten cents, twenty-five cents, fifty cents, or one dollar **in the form of chips**.
2. The player shall ante for each hand by placing a chip in front of the player on the table before the first card of the game is dealt. Then, the dealer shall sweep the antes and place them in the pot. Once the first card has been dealt to any player, the ante may not be altered.

History: Effective October 1, 1987; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-10, 53-06.1-17

10-04.1-10.1-18. The deal.

1. All cards used to play at poker must be dealt out of the hand by the dealer.
2. If the organization provides the dealer, a **button dealer-button** must be moved around the table clockwise player to player so that the player who has the **button dealer-button** receives the advantages of playing and betting last.
3. If the organization does not provide a dealer, the first dealer must be assigned by random selection such as dealing for the high card. The deal must be passed clockwise from player to player. No player who deals a game may deal another game until each other player at the table has dealt a game in the player's turn. However, any player may voluntarily waive the player's right to deal at the player's turn for any particular game.

History: Effective October 1, 1987; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-07.2, 53-06.1-17

10-04.1-10.1-19. The play - Tournaments only.

1. Texas hold'em must be played according to the following rules:
 - a. The dealer shall burn a card after every round of betting.

- b. The dealer shall first deal two cards to each player, both cards facedown, and dealt one at a time. The first player to receive the card is the player to the left of the player who has the assigned button dealer-button. The last player to get the player's card is the player assigned the button dealer-button. After each player has received the player's two cards, there is a betting round. The player to the left of the dealer or button dealer-button opens first by placing a bet, with each player having the opportunity to call the bet, raise it, or go out by folding the player's cards. No player may check on this round.
- c. The dealer then burns a card. Then, the dealer deals three community cards from the deck and turns them faceup (flop) in the center of the table. Community cards are common to the hand of every active player in the pot.
- d. After the flop, the betting continues for another round. The player who is closest to the left of the player assigned the button dealer-button is the first player to bet. After the bet has been opened, any player may call, raise, or fold.
- e. The dealer then burns a card. Then, the dealer deals another the fourth community card from the deck and turns it faceup (flop) in the center of the table. Another betting round occurs. Then, another community card is dealt faceup in the center of the table as the final betting round.
- f. After the flop, the betting continues for another round. The player who is closest to the left of the player assigned the dealer-button is the first player to bet. After the bet has been opened, any player may call, raise, or fold.
- g. The dealer then burns a card. Then, the dealer deals the fifth community card from the deck and turns it faceup (flop) in the center of the table as the final betting round.
- h. After the flop, the betting continues for another round. The player who is closest to the left of the player assigned the dealer-button is the first player to bet. After the bet has been opened, any player may call, raise, or fold.
- i. After all player bets are made on this round, and if there are two or more players remaining in the game, there is a showdown with the best high hand winning the pot. The player may use any of the player's two dealt cards and

five community cards as the player's five cards in the showdown.

2. The games five-card low draw poker, five-card high draw poker, and five-card high-low split draw poker must be played according to the following rules:
 - a. The dealer shall deal each player five cards face downwards. The betting is started by the player to the immediate left of the player with the dealer-button. After the initial betting round, the players may either retain their pat hand or discard as many cards as the player chooses, and be dealt a new card facedown for each card discarded. A card is burned. All of a player's discards are placed in the discard pile at the same time and all the player's newly dealt cards are received at the same time. Then, there is a betting round and the showdown.
 - b. In the game five-card low draw poker, the lowest ranking hand wins the pot. If a joker is used, it is the lowest card in a player's hand that does not form a pair. Aces are low.
 - c. In the game five-card high draw poker, the highest ranking hand wins the pot. Aces are either high or low, at the player's option. If a joker is used, it must be used according to the following:
 - (1) It must be an ace, unless it is used to complete a straight-flush, flush, or straight.
 - (2) It must be used as any specific card not already held that completes a straight-flush, flush, or straight.
 - d. In the game five-card high-low split draw poker, the player with the best high hand and the player with the best low hand split the pot. A player who wins one direction and ties one other player for the other direction would receive three-quarters of the pot. Aces may be used as either high or low. The joker may be used.
3. The game stud poker must be played according to the following rules:
 - a. Five-card stud poker - the player shall receive one card facedown and one card faceup to form his initial hand. The player shall receive three more cards faceup dealt one at a time. There must be a total of four betting rounds, one after each new card has been dealt faceup. Five-card stud poker is only played at high poker. The dealer shall burn a card after every round of betting.

- b. Seven-card low stud poker and seven-card high stud poker - the player receives two cards dealt facedown and one card dealt faceup. The player with the low card opens first. If two or more players have the same valued card, the first player with the lowest card begins. On all subsequent rounds, the player with the best hand faceup acts first. The players receive three more cards dealt faceup and a final card dealt facedown, with a betting round after each card. In seven-card stud high, the highest hand wins the pot. In seven-card stud low, the lowest hand wins the pot. The dealer shall burn a card after every round of betting.
- c. Seven-card high-low split stud poker - this game is played similar to seven-card high stud poker. The highest hand and the lowest hand split the pot. For example, a player who wins one direction and ties one other player for the other direction receives three-quarters of the pot and a player who wins both directions without a tie receives all of the pot. Aces may be used for either high or low. The dealer shall burn a card after every round of betting.

History: Effective October 1, 1987; amended effective June 1, 1990.
 General Authority: NDCC 53-06.1-17
 Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-20. Rake.

- ~~1-~~ A rake shall only be pulled from the pot by the dealer in an obvious manner at the completion of the game. The rake must be placed in a designated rake area and must remain in the designated rake area until a player is declared the winner and paid. The rake must then be accounted for and placed in a segregated area near the dealer.
- 2- The designated rake area must be clearly visible to all players and must be positioned in a location on the table where it is near the dealer. Repealed effective June 1, 1990.

History: Effective October 1, 1987.
 General Authority: NDCC 53-06.1-17
 Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-21. Operation of the games - Tournaments only.

- 1. Play must always proceed in a clockwise direction, with each player's turn to act following the person on the player's immediate right.
- 2. The organization may shall set a minimum player buy-in for each game amount. If the organization sets a minimum buy-in,

a a player leaves the game, the player shall cash out the player's chips. If a player ~~returning~~ cashed out and returns to the game after an absence of less than one hour within a specified time period, the player is still considered part of the same playing session and a buy-in is not required unless the player had cashed out. Then, the player shall may buy in for at least the amount he the player cashed out. Otherwise, the player is terminated from the tournament.

3. The table stakes rules of the game are:
 - a. Only poker chips on the table at the start of a game may be in play for that pot.
 - b. A player may not remove any of the player's chips from the table until the player quits the game.
 - c. Unless allowed by the organization, no player may purchase additional chips other than between games.
 - d. Concealed chips may not be used in play for a game.
4. A player is responsible for taking reasonable means to protect the player's hand by holding on to it or by placing one or more chips on it. A player who fails to take reasonable means to protect the player's hand shall have no relief if the player's hand becomes foul by contact with discarded cards or accidentally taken in by the dealer. Any contact whatsoever of an unprotected hand with a discarded card ~~shall~~ must make it dead. A protected hand may not be ruled dead by accidental contact with discards, unless it is impossible to completely reconstruct. A player who has a protected hand taken in by the dealer or fouled by discards through no fault of the player is entitled to be refunded all the chips the player put in the pot on that game.
5. Each card dealt must be the top card of the deck. After the initial card of a hand has been dealt to a player, the deal continues in a clockwise direction. The order of future ownership of cards that will be in play is not to be disturbed at any time during the deal of a round.
6. A downcard dealt faceup or flashed as it is dealt so that a player might know its identity, or a downcard dealt off the table, is considered an exposed card. A card exposed by the player is not an exposed card. An exposed downcard is required to be replaced. The replacement of an exposed card must be according to subsection 5. The dealer shall determine whether a card has been exposed.
7. A misdeal ~~shall~~ must cause all the cards to be returned to the dealer for a redeal. A misdeal may not be called once substantial action has taken place on a deal. "Substantial

action" is defined as either three players acting (by either betting or folding) or two players acting, if one of them has raised the pot.

8. A player, confronted by a bet larger than the player's stack, may call for the amount of chips in front of the player. The excess part of the bet is either returned to the bettor or used to form a side pot with another player or players by matching the amount called. There is no limitation on the number of side pots. A player who is all-in is only entitled to the pot that the player is wagered all-in.
9. A player shall act on the player's hand, and shall notify the other players that the player has not yet acted if the betting action inadvertently bypasses the player.
10. When the dealer burns a card, it must be placed facedown on the table before dealing any round of cards after the players have received their starting cards. Burned cards must be kept separate from the discards throughout the hand. Any time the dealer burns a card and is unable to deal immediately, ~~it is recommended that~~ the dealer shall place the burned card back on top of the deck, and verbally announce that fact.
11. A player facing a bet who announces a fold shall have a dead hand. In stud poker, the dealer shall determine whether the picking up by the player of the player's upcards off the table shall be considered a fold if the next player takes action. A statement by a player of "call" or "raise", or of a specific size bet is binding. A player who verbally states a "call" or "raise" of a certain amount but puts a different value of chips in the pot must have the player's bet corrected to the stated amount if the next player has not acted. There may be no substitution by a gesture or irregular statement for a player's action in that a player must shall verbally state "check", "call", "raise", or "fold". A player who makes a bet and then decides incorrectly that the player has no live hand against the play and throws away the player's hand into the discards loses the pot, ~~unless the player's hand is declared retrievable by the dealer.~~
12. A player who unintentionally puts less chips into the pot needed to call a bet shall either complete the call or withdraw the player's chips and fold. However, a player who shows he is unaware of the last raise by calling only the amount of the bet before that raise may also withdraw the player's chips and fold. However, an illegal small bet must stand once three players have called, a player has raised, or all players in the pot have acted. Otherwise, the action must back up to the player and any other action is nullified.
13. A player may assemble chips in front of the player before acting. A player ~~shall~~ must be considered to have made a bet

if the player pushes assembled chips forward or releases chips into the pot at a sufficient distance from the player to make it obvious that the player intends it as a bet. If the situation is unclear and a player allows the dealer to pull the player's chips into the pot without making an immediate objection, it must be considered a bet by the player.

14. A player shall place ~~his~~ the player's entire bet in front of the player at one time. Unless a player has placed the required amount of chips to call a bet and to signify a raise, the player may not place additional chips for a raise.
15. If a player calls but places a value of chips into the pot that is larger than the bet to the player, it must be regarded as only a call unless the player announces a raise. However, the player may clarify the player's apparent call as a raise only if no other ~~players~~ player behind this player has placed any chips in the pot or announced a call or raise. The dealer shall provide the player with change of chips at the time the bet is placed by the player.
16. If a player has a fouled hand by having too many cards, that hand is considered dead and cannot win any part of the pot. Except for games of low draw, low stud, and high-low split, a player could play with too few cards. A fouled hand is a hand that either has an improper number of cards (unless the player is short a card and due to get the top card of the deck) or the hand has come into contact with discards. If a player discovers his hand is foul, the player cannot recover any chips the player placed into the pot unless a misdeal can be called in accordance with subsection 7 of section 10-04.1-10.1-28. However, if a player makes a bet or raise and the next player has not yet acted, that player may call attention to the fact that the player's hand is fouled and be returned the uncalled amount. No player may deliberately foul the player's hand to recover a bet, or make an attempt to win the pot by betting or raising after the player has discovered the player's hand is foul. If the dealer determines that the player has done this, the dealer shall rule that the player's chips remain in the pot.
17. If two or more players remain in contention for the pot after all the cards have been dealt and the betting is over for that game, the remaining players with active hands show their cards to determine which player has the best hand and wins the pot. A player may discard a hand without showing it; however, any player remaining in the game may see a discarded hand upon request. If a player makes such a request, only the dealer can turn a discarded hand faceup. The following govern the showdown:

- a. A hand with too many cards for that game is dead. However, for games of low draw, low stud, and high-low split, a player could play with too few cards.
 - b. A hand is ranked according to the actual cards it contains.
 - c. A hand prematurely discarded by a player that touches the discarded cards is dead.
 - d. A verbal concession is not binding.
 - e. A player who leaves the table conceding the pot ~~must~~ shall discard the player's hand.
 - f. A hand discarded faceup is still a live hand, provided it has not become irretrievably mixed with the discards.
 - g. A hand discarded facedown may be retrieved only if the following conditions are met:
 - (1) The player retrieves it, or requests the dealer to turn it faceup.
 - (2) The hand has not touched any discards.
 - (3) Another player has not been induced to discard that player's hand.
 - (4) A hand discarded facedown that is not considered retrievable is dead even if it had been shown before being discarded.
 - h. A hand discarded by the dealer with the player's approval is dead.
 - i. If the dealer discards the winning hand without the player's approval, the player is still entitled to the pot, provided, it is claimed before being taken in by another player.
 - j. A player who remains silent has not given approval for the dealer to discard the player's hand. The player shall do something positive to indicate approval to the dealer.
18. If the dealer runs out of cards in the games of seven-card low stud poker, seven-card high stud poker, and seven-card high-low split stud poker, the dealer shall burn a card and then deal the seventh card faceup as a community card.
19. At the conclusion of the calls and raises, any player who thinks the player has a possible contending hand ~~must~~ shall immediately place it faceup on the table at the showdown.

Otherwise, the order of revealing hands by the players at the showdown must be:

- a. If there has been a bet on the final round, the player who made this bet shall show first.
 - b. If there have been one or more raises on the final round, the player who last raised shall show first.
 - c. If the final round has been checked by all the players, the player who acted first shows first.
 - d. The subsequent order of showing hands is clockwise around the table from the player who is required to show first.
20. Suits of cards do not count in the ranking of hands at the showdown.
21. All pots are to be awarded by the dealer only. When the dealer has awarded a pot and it has been taken in by that player without a claim made against it, the award stands. No player may make an agreement with any other player regarding the pot. Each game must be played to conclusion and the pot awarded to the actual winning player.
22. If a pot that is split by having tied hands at the showdown has an odd chip, this chip must be awarded to the player having the highest ranking card in the player's hand. However, this requirement does not apply to splits between the high and the low hands in high-low poker, in which the player with the high hand receives the odd chip. If the lowest denomination chips in the pot are unable to be used to split the pot evenly, the dealer shall exchange the chips in order to divide split pots as evenly as possible.
23. If a defective deck (for example - containing two identical cards, a card of a different colored back, or missing a card) is inadvertently used, all chips in the pot must be returned to the players in the amount each contributed. However, any player that had the opportunity to realize the deck was defective and attempts to win the pot by a bet is not entitled to any chips in the pot. That player's chips must remain in the pot as forfeited money for the next game. However, a player who has already won a pot is entitled to keep it, even though the deck is subsequently found to be defective.
24. If a card is improperly faced in the deck, it must be treated as a voided card and replaced by the next card below it in the deck after all the other players have received cards for that round. A joker dealt faceup when the joker is not being used in the game is a voided card. A joker dealt facedown to a player when the joker is not used in the game must be replaced

by the top card of the deck after all the other players have received cards for that round.

25. The organization may place a maximum time limit on a player for taking action on the player's hand. At the lapse of the time limit, if there has not been a bet to the player, the player shall check; or if there has been a bet to the player, the player's hand is dead. However, the dealer shall provide reasonable warning to the player prior to the application of this subsection.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.2, 53-06.1-17

10-04.1-10.1-22. Posting of rules. The following rules must be posted in a clear, legible manner at each poker table, or in such a conspicuous location so that the player at a poker table can readily read ~~such~~ those rules.

HOUSE MUST

Use one deck of cards (fifty-two cards, except when a joker
joker may be used)

Use cut card to conceal the bottom card of the deck

Deal out of the hand

Provide a dealer (tournament play)

Allow blind bets (choose one when posting)

- or -

Not allow blind bets

Use "bet-or-check" policy (choose one when posting)

- or -

Not use "bet-or-check" policy

Use "check-and-raise" (choose one when posting)

- or -

Not use "check-and-raise"

~~Use a rake-off percentage of two percent of pots of ten dollars
or greater (choose one when posting)~~

~~or~~

Charge a fixed fee of ten dollars

May allow an ante of either five cents, ten cents,
twenty-five cents, fifty cents, or one dollar

Allow a maximum of three raises per round

May limit each raise per round to either five cents, ten cents,
twenty-five cents, fifty cents, or one dollar; however,
each raise must be equal to or greater than the original
bet of that betting round but cannot exceed one dollar

PLAYER RULES

Must be twenty-one years of age or older

No side bets

No credit

Tipping the dealer permitted (choose one when posting)

- or -

Tipping the dealer not permitted

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.2, 53-06.1-17

10-04.1-10.1-23. Poker tournament restrictions.

1. A licensed organization may conduct a poker tournament, charge the participating players a fixed entry fee of ten dollars not to exceed one hundred dollars, and award prizes.
2. The organization may adopt special policies for poker tournaments. Provided, that the special policies must be consistent to the gaming law, regulations, and formal attorney general directives and posted in a conspicuous location where all tournament players can read the rules.
3. The organization shall maintain a record of all such the fees collected and the number of players for each tournament conducted.
4. The organization may limit the number of buy-ins of each player to one buy-in. The amount of the initial buy-in must be the same for each player participating in the tournament.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-24. Recordkeeping system required.

1. A licensed organization shall retain daily accounting records with regard to poker for a period of three years from the end of the quarter for in which the records are kept poker activity occurred unless the organization is released by the attorney general from this requirement. The records must be maintained in the state of North Dakota.
2. The recordkeeping system must include at least the following records for each occasion of poker gaming activity:
 - a. Records documenting the starting and ending poker cash bank and chip bank. It is recommended that on hand. Unless there is only one gaming employee or volunteer scheduled on duty, the count of the cash bank and chip bank must be verified by at least two persons who shall sign or initial such and date that verification.

- b. If the organization charged players a fixed amount, records for each table providing:
- (1) The time that the fee was assessed.
 - (2) The amount of the fee. Records documenting the poker activity of each poker table, including a summary for the poker occasion. The records must include for each one-half hour interval, by poker table, the fees collected and the number of players.
- c. If the organization charged players two percent of the pot, records for each table providing:
- (1) The amount of rake from each pot by each game.
 - (2) The name, signature, and hours worked of the gaming employee or volunteer who was responsible for the collection of the rake fee.
- d. Records providing a A reconciliation, by site, (summary) of adjusted gross proceeds/adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
3. All daily activity records must be completed by use of a nonerasable ink pen, be readily available at the site until the poker occasion is concluded, and be legibly signed or initialed and dated by the person completing the record.

History: Effective October 1, 1987; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10.1-25. Actual cash profit bank deposit required by licensed organizations. For poker, the actual cash profit, less the increase or plus the decrease in the starting cash bank for the next occasion's activity, must be deposited intact in the organization's general gaming bank account no later than the fifth banking day following the day of play. If the organization prepares a deposit slip for the deposit of actual cash profit from only one day's poker activity, the validated bank deposit slip or receipt must contain a reference to poker, date of the poker activity, deposit amount, and be included as part of the daily accounting records of that day's poker activity. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one day's poker activity or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-06-15 (bingo), 10-04.1-07-10 (raffles), 10-04.1-08-11 (charitable gaming tickets and punchboards), 10-04.1-09-04 (professional sports pools), and 10-04.1-10-23 (twenty-one), and 10-04.1-10.2-06 (calcuttas). The total

of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

STAFF COMMENT: Chapter 10-04.1-10.2 contains all new material but is not underscored so as to improve readability.

CHAPTER 10-04.1-10.2 CALCUTTAS

Section	
10-04.1-10.2-01	Calcutta
10-04.1-10.2-02	Record of the Win
10-04.1-10.2-03	Person Prohibited From Falsifying Record of the Win
10-04.1-10.2-04	Reconciliation of Inventory Control Records
10-04.1-10.2-05	Recordkeeping System Required
10-04.1-10.2-06	Actual Cash Profit Bank Deposit Required by Licensed Organizations

10-04.1-10.2-01. Calcutta. A "calcutta" is a competitive sporting event of two or more competitors in which players (bidders) wager by a verbal, sealed, or open bid at an auction for the exclusive right to "purchase" or wager on a particular competitor in the event. The wagers usually vary in amount. A calcutta auction pool is comprised of the wagers paid by players (bidders) who offered the highest bid to the auctioneer on the competitors participating in the sporting event. When the outcome of the event has been determined, the auction pool is distributed to the player (bidder) who had "purchased" or wagered upon the winning competitor. The winning competitor may be one competitor, a team of competitors, or certain ranked competitors (for example, the top three placements in an event). The distribution (cash prize) to the winning player (bidder) is based on a predetermined percentage of the calcutta auction pool, which may not exceed ninety percent of the total auction pool.

1. A calcutta may be conducted for a professional or amateur sporting event held only in the state of North Dakota, but not for an elementary, secondary, or postsecondary education sporting event.
2. A calcutta board is a sheet of paper, cardboard, or similar material on which is printed a matrix of horizontal lines and vertical columns sufficient to accommodate at least the information required by subsections 15, 24, and 26.

3. The word "calcutta" must be conspicuously printed at the top of the calcutta board. There must also be placed conspicuously on the board the following information which must be completed by the organization:

SPORTING EVENT
METHOD OF PRIZE PAYOUT

4. No calcutta may be conducted unless a North Dakota gaming stamp has been affixed to the calcutta board by a licensed distributor.
5. The calcutta board must have a serial number and be acquired only from licensed distributors.
6. No organization may modify or otherwise change the serial number that was written on the state gaming stamp by the distributor.
7. The organization shall conspicuously post a notice on the site containing the organization's special rules affecting the calcutta and requirements of the players (bidders).
8. Cash and merchandise prizes may be awarded. The total cash prize payout and the total current retail price of a merchandise prize may not exceed ninety percent of the actual gross proceeds of the calcutta auction pool.
9. Unless an unpurchased competitor is withdrawn from the calcutta, the organization may not have a direct interest in the outcome of the calcutta.
10. No competitor, member of a team of competitors, or one of certain ranked competitors in a calcutta may be under eighteen years of age.
11. A member of the organization's governing board or games of chance committee may be a competitor or player (bidder).
12. Each competitor in the sporting event must be identified before the auction begins.
13. Each competitor listed on the calcutta board constitutes a chance to win in the calcutta and each competitor must be offered through an auction directly to prospective players (bidders). The player (bidder) who offers the highest bid for a particular competitor by a continuous verbal bid process, sealed bid, or open bid purchases that competitor.
14. Prior to the auction, the organization shall verbally announce and post the predetermined percentage of the calcutta auction pool that will be distributed as the cash prize or the description of the merchandise prize to be awarded to the

- winning player (bidder), and the predetermined percentage of the auction pool that will be retained by the organization. The amount a player (bidder) may win must depend on the total amount of the calcutta auction pool and may not depend on any odds set by any person.
15. Prior to the auction, at least the following information must be completed for each line on the calcutta board:
 - a. Each line must be assigned a sequential number starting with the number 1.
 - b. Name of the competitor in the sporting event.
 16. The sequence of the verbal bid auction must be determined by a random drawing of the sequential numbers assigned each line. The auction method used to auction off the competitors must be fair to each competitor. Each player must have an equal opportunity to wager for a particular competitor.
 17. There is no limit to the amount a player (bidder) may wager upon a competitor.
 18. No competitor may be auctioned off to more than one player (bidder).
 - 18.1. No player may be under the age of twenty-one.
 19. A player (bidder) may purchase more than one competitor.
 20. The organization shall conduct the auction at the organization's licensed gaming site and a player (bidder) must be present at the gaming site in order to place a wager in the calcutta. This licensed gaming site may be a presently licensed gaming site. If the organization desires to conduct the auction at the site where the professional or amateur sporting event is held, the organization shall first apply for and be issued a license by the attorney general for that site.
 21. A competitor in a sporting event may also be a player (bidder) who may purchase oneself or another competitor who is entered in the same sporting event.
 22. If a competitor is not purchased by a player (bidder) through an auction, the organization may choose any or all of the following options to sell the competitor:
 - a. Withdraw the unpurchased competitor from the calcutta.
 - b. If there is more than one unpurchased competitor, place the unpurchased competitors in one or more groups and auction the one or more groups as one competitor.

- c. Allow a competitor to purchase oneself for a predetermined minimum wager. The predetermined wager is in addition to any entry fee assessed by the organization.
- 23. The organization shall provide each player (bidder) who bid the highest amount on a competitor the original part of a consecutively numbered receipt which must be at least a two-part form and which must include at least the following information:
 - a. Name of the organization.
 - b. Name of the licensing authority.
 - c. License number.
 - d. Receipt number.
 - e. Full name, street address or rural route, city, state, and zip code of the player.
 - f. Amount of the player's (bidder's) wager.
 - g. Full name of the competitor who the player (bidder) wagered on.
 - h. Description of the merchandise prize or predetermined percentage of the calcutta auction pool that will be distributed as the cash prize to the winning player (bidder).
 - i. Date of the calcutta.
- 24. After the auction, the organization shall complete at least the following information for each line on the calcutta board:
 - a. Name of the player (bidder) who purchased the competitor.
 - b. The amount wagered by the player (bidder) on the player's competitor.
 - c. The cumulative amount, in sequence of the line numbers, wagered by the players (bidders) on the competitors.
- 25. The winning player (bidder) of a calcutta is determined at the conclusion of the sporting event. The player (bidder) shall redeem the receipt referenced in subsection 23.
- 26. After the conclusion of the sporting event, the organization shall complete for each line on the calcutta board the amount of the auction pool won by each player (bidder).

27. The organization may award the cash or merchandise prize to the winning player (bidder) at the location where the professional or amateur sporting event is held.
28. No organization, competitor, player (bidder), or any person may cheat, misrepresent, or do other disreputable tactics that hinder or prevent a fair and equal chance for all players (bidders) to win the calcutta or that otherwise affect the outcome of the pool.
29. An organization may conduct more than one calcutta on the same professional or amateur sporting event. More than one organization may independently conduct a calcutta on the same professional or amateur sporting event.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.3, 53-06.1-17

10-04.1-10.2-02. Record of the win. When any player (bidder) wins a cash prize greater than one hundred dollars, the organization shall make a record of the win. However, the attorney general may require any organization to make a record of the win of any cash prize amount determined by the attorney general. The record of the win must be completed for the total cash prize payout regardless of whether the player (bidder) intends to split the player's (bidder's) cash prize with another player. The record of the win must consist of either a sequentially numbered check drawn from the general gaming bank account or a sequentially numbered receipt. The check or receipt must include at least the following information:

1. The organization shall legibly print, in ink, on the face of the check or receipt at least the following:
 - a. Name of the gaming site.
 - b. Gaming stamp number.
 - c. Game serial number.
 - d. Game type (calcutta).
 - e. Amount of the cash prize.
 - f. Date of the cash prize payout.
 - g. Full name, street address (if available) or rural route or post-office box number, city, state, and zip code of the payee.
 - h. Unless the organization maintains current master records of player (bidder) identification information, the record

of the win must include the payee's driver's license number, including state of license registration. The organization is responsible for the accuracy of the master records. This information must be identified by the organization directly from the payee's pictured driver's license. If the payee does not have a pictured driver's license, the organization shall indicate the payee's full name, street address (if available) or rural route or post-office box number, city, state, and zip code which must be taken from at least two other forms of identification. The organization shall determine the real identity of the payee and require such additional proof of identification from a reliable source as is necessary to properly establish the payee's identity. The organization may not pay out any prize unless and until the payee has fully and accurately furnished to the organization all information required by this section. If the payee does not have a pictured driver's license or at least two forms of identification, the organization shall mail the cash prize to the payee.

- i. Legible signature of the organization representative who completed the record of the win.
2. After the record of the win is completed by the organization, the payee shall legibly sign and date, in ink, the record of the win to acknowledge the cash prize amount.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-10.2-03. Person prohibited from falsifying record of the win.

1. No gaming employee or volunteer or player may falsify any information of a record of the win. No gaming employee or volunteer may willfully or deliberately disregard the requirements of section 10-04.1-10.2-02 in completing the record of the win and intentionally or unintentionally through negligence of responsibility falsify or permit a player to falsify the record of the win when the exercise of reasonable care by the gaming employee or volunteer would have prevented or detected the player's falsification, including a player's conspiracy with another person to have the other person claim the cash prize. No player may knowingly or willfully provide or conspire with another person to provide false player identification information in deliberate disregard of the requirements of section 10-04.1-10.2-02. No player who has actually won a cash prize of an amount requiring a record of the win may, through a fraudulent scheme, have any other person claim the cash prize.

2. If the organization determines that a player has falsified, attempted to falsify, or conspired with another person to falsify the record of the win, the organization shall deny the player the cash prize and notify the attorney general or a local law enforcement agency.
3. The organization may post a clear and legible notice in a conspicuous location at the gaming site to notify persons of the prohibition against attempts to falsify or falsifying a record of the win and warn of the consequences of violating this prohibition.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10.2-04. Reconciliation of inventory control records.

1. The organization shall, on at least a quarterly basis, compare its inventory control records, as described by subdivision e of subsection 2 of section 10-04.1-10.2-05, of calcutta boards that are recorded as being in play and unplayed to calcutta boards that are actually in play and actually in inventory as unplayed. The organization shall reconcile any difference. The reconciliation must be performed by a person who is independent of the person who has custody of the physical inventory of the calcutta boards, including the site manager and gaming manager.
2. The organization shall document, in writing, that the reconciliation was performed. The documentation must include at least the following information:
 - a. Name and job position of the person who performed the reconciliation.
 - b. Date the reconciliation was conducted.
 - c. Procedure employed.
 - d. Result and corrective action taken.
 - e. Signature of the person who performed the reconciliation.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10.2-05. Recordkeeping system required.

1. Except as provided by subdivision a of subsection 2, a licensed organization shall retain daily accounting records with regard to calcuttas for three years from the end of the quarter in which the calcutta activity occurred, unless the organization is released by the attorney general from this requirement. The records must be maintained in North Dakota.
2. The recordkeeping system must include at least the following records for each calcutta conducted:
 - a. The completed, sold calcutta board indicating the winning competitor and player. The calcutta board must be retained by the organization for one year from the end of the quarter in which the calcutta activity occurred, unless the organization is released by the attorney general from this requirement.
 - b. Records documenting the starting and ending cash on hand in the calcutta auction pool. Unless there is only one gaming employee or volunteer scheduled on duty, the count of the cash must be verified by at least two persons who shall sign or initial and date that verification.
 - c. A reconciliation (summary) of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit.
 - d. Record of the win as required by section 10-04.1-10.2-02.
 - e. Inventory control records must include at least the sales invoice number and date, date received, dates of issuance to and from a site, site name, period played, quarter gaming tax return on which reported, and date and method of disposal for each calcutta board, by gaming stamp number and game serial number. Unless a class B organization has only one site which is the location of the organization's home office, the class B organization shall maintain inventory control records at each site and the records must include, for each calcutta board, at least the dates received from and returned to the home office, by gaming stamp number and game serial number.
3. All daily activity records must be completed by use of a nonerasable ink pen, be readily available at the site until the calcutta event is concluded, and be legibly signed or initialed and dated by the person completing each record.
4. Unless the gaming activity of a closed calcutta board is summarized by a person who is independent of any person who was directly or indirectly involved in operating the calcutta board while the calcutta board was in play, including the site manager and gaming manager, the summarization must be audited by a person who is independent of the person who summarized

the closed calcutta board. If there is any variance between the summarization and audit, the person who audited the calcutta board shall notify the gaming manager or other appropriate organization representative of the variance.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-10.2-06. Actual cash profit bank deposit required by licensed organizations. For a calcutta, the actual cash profit, plus the amount of prizes paid by check that were not cashed at the site, must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day of the calcutta auction pool prize disbursement. If the organization prepares a deposit slip for the deposit of actual cash profit from only one calcutta occasion, the validated bank deposit slip or receipt must contain a reference to a calcutta, date of the calcutta occasion, deposit amount, and must be included as part of the accounting records of that calcutta occasion. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one calcutta occasion or other gaming activity, or both, the organization shall prepare a supporting schedule which lists, by each game activity, the information required to be referenced on the validated bank deposit slip or receipt in accordance with this section and sections 10-04.1-06-15 (bingo), 10-04.1-07-10 (raffles), 10-04.1-08-11 (charitable gaming tickets and punchboards), 10-04.1-09-04 (professional sports pools), 10-04.1-10-23 (twenty-one), and 10-04.1-10.1-25 (poker). The total of the deposit amounts listed on the supporting schedule must reconcile to the validated bank deposit slip or receipt amount. This supporting schedule or a copy must be included as part of the daily accounting records of each game activity.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-11-02. Incomplete tax returns.

1. An originally filed incomplete tax return will not be considered timely filed unless correctly completed and returned by the due date for filing or an extended date as approved by the attorney general. Delays in mailing, mail pickups, and postmarking are the responsibility of the eligible organization.
2. The attorney general may assess a monetary fine against an organization that files an incomplete tax return. A tax return including accompanying schedules must be considered incomplete if there is:

- a. Information missing.
- b. Failure to follow tax return instructions provided by the attorney general resulting in an incomplete or inaccurate tax return.
- c. Required documentation not provided.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-03, 53-06.1-17

10-04.1-11-03. Consolidated return.

1. Only one return per quarter may be filed for each eligible organization licensed by the attorney general.
2. Operations of an auxiliary, holding company, or other closely connected organization as defined in section 10-04.1-03-03 are subject to the supervision of the governing board of the licensed organization and the reporting by that organization.
3. Class B licensees with more than one gaming site shall file ~~a class B site~~ an accounting for record of each site site's gaming activity.
4. Each organization shall file a quarterly record of state gaming stamp activity with the quarterly tax return.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-12, 53-06.1-17

10-04.1-11-04. Extensions for good cause. Extensions for filing the North Dakota gaming tax return may be granted for good cause, with the approval of the attorney general, by filing a written request setting forth the reason for the extension. A request must be postmarked on or before fourteen days prior to the regular due date for filing the tax return to enable the attorney general to consider and act on the request. Extensions to file do not extend the date for devoting the net proceeds.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-12, 53-06.1-17

10-04.1-11-05. Attorney general to determine accuracy of return. The attorney general has the authority to verify and determine the accuracy of any or all items reported on the return; to ascertain the propriety of any or all gross proceeds, prizes, expenses, ~~deductions~~, and distributions of net proceeds; to determine the current gaming tax liability and excise tax liabilities; and to prepare necessary returns.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-12, 53-06.1-17

10-04.1-12-01. Period within which net proceeds are to be disbursed.

1. For purposes of administering subsection 7 of North Dakota Century Code section 53-06.1-06, the ~~term~~ phrase "the date such proceeds were earned" ~~found in~~ of that subsection means the last day of the quarter in which earned.
2. Net proceeds earned during any quarter must be devoted by the last day of the following quarter unless an extension is requested, in writing, of the attorney general and an extension is granted.
3. Quarters must be identified and begin and end as follows:

<u>QUARTER NUMBER</u>	<u>BEGINS</u>	<u>ENDS</u>
1	July 1	September 30
2	October 1	December 31
3	January 1	March 31
4	April 1	June 30

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-17

10-04.1-12-02. Licensed organizations not to receive special consideration from donees.

1. Organizations licensed by the attorney general to conduct games of chance may not accept or exchange any payment, gift, service, or other thing of material value from a recipient or potential recipient of net proceeds of its games of chance, whether it be before or after ~~such~~ those net proceeds are devoted, nor may a licensed organization devote funds to a recipient on the condition that the licensed organization receive a payment, gift, or other thing of value from the recipient.

2. A person or organization, whether or not licensed to conduct games of chance, that is a donee recipient or potential donee recipient of net proceeds from a licensed organization may not give, or offer to give, any payment, gift, or other thing of material value to a donor licensed organization or potential donor licensed organization for that the licensed organization's own use benefiting that organization.
3. Any eligible organization that devotes net proceeds and, within a period beginning one year before the disbursement and ending one year after the disbursement, sells or enters into an agreement to sell property, real or personal, to that same donee, then such that contribution is deemed a contribution of property by the nonprofit donor organization and not a devoting of net proceeds.
4. Contributions of property encumbered by liens, chattels, mortgages, or any other forms of indebtedness are considered a sale of property for purposes of subsection 3.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-11, 53-06.1-17

10-04.1-12-03. General guidelines for eligible uses. For the purpose of administering subsection 6 7 of North Dakota Century Code section 53-06.1-01, the following criteria must be generally applied to each item enumerated in that subsection:

1. The contribution must be a current irrevocable remittance not contingent upon future occurrences, and specific as to recipient and use.
 - 1.1. After an organization has made a contribution, the organization may not interfere with the recipients' control and management of the contribution.
2. The intended use must be broad in scope affecting and affect an indefinite number of people, except for recipients of educational scholarships and those individuals as permitted under subdivisions h and i of subsection 7 of North Dakota Century Code section 53-06.1-01.
3. Private athletic, social, hobby, trade, business, professional or other similar clubs or associations generally are not eligible recipients, in and of themselves, unless the specific use of the intended contribution meets the criteria set forth in this section.
4. A use of funds for adult activities is restricted to uses based on criteria determined by the attorney general.

5. In applying subdivisions h and i of subsection 6 of North Dakota Century Code section ~~53-06.1-01~~, the events causing the eligible use must have occurred and the expense incurred must be uncompensated by insurance. Accumulations for future occurrences are not permitted.
- ~~6.~~ A use of funds for the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property owned by an eligible organization is an eligible use only if the eligible organization agrees that, upon abandoning the exclusive use of the property which is stated in subsection ~~6~~ 7 of North Dakota Century Code section 53-06.1-01, it will grant its interest in the property to a governmental unit or to an organization which will use it exclusively for the purposes stated in subsection ~~6~~ 7 of North Dakota Century Code section 53-06.1-01. However, if a disposition of an organization sells the property is made and, the net proceeds resulting from the disposition are either sale must be placed into in the charitable gaming trust fund bank account, disbursed to an eligible use, or reinvested into in like property within one year, the disposition will not be considered an abandonment of the exclusive use of the property. The eligible organization shall, in its minutes or other proper records, acknowledge the requirement related to the abandonment of the exclusive use or sale of the property as referenced in this subsection.
- ~~7.~~ In applying subdivisions a and b of subsection 6 of North Dakota Century Code section ~~53-06.1-01~~, the disbursement of funds for eligible uses must go directly from the "charitable gaming trust fund account" to the particular use benefiting that licensed organization. The funds may not go to the general operating fund of the licensed organization. Gaming expenses or capital costs associated with gaming are not a use benefiting the organization.
- ~~8.~~ 6. In Except for the supplemental bank account of a class A organization, in applying subsection ~~6~~ 7 of North Dakota Century Code section 53-06.1-01, the disbursement of funds for eligible uses must go directly from the general gaming bank account of class A organizations or directly from the charitable gaming trust fund bank account of class B organizations to the ultimate use or to a fund designated as an eligible use for temporary holding by the recipient organization. Gaming expenses or capital costs associated directly or indirectly with gaming activity are not an eligible use.
7. No organization may disburse net proceeds to support any fundraising activity that is associated with gaming. For example, purchase of capital cost equipment and consumable products associated with a concession or cafe located at a gaming site where bingo is conducted.

8. If an organization disburses net proceeds to support any fundraising activity that is not associated with gaming, only the net income of that fundraising activity may be applied to any negative imbalance of the organization's general gaming bank account or charitable gaming trust fund bank account.
9. In applying subdivisions h and i of subsection 7 of North Dakota Century Code section 53-06.1-01, the events causing the eligible use must have occurred and the expense incurred must be uncompensated by insurance. Accumulations for future occurrences are not permitted.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-11, 53-06.1-17

10-04.1-13-01. Ineligible use of net proceeds by donee.

1. In order to ensure that the entire net proceeds of games of chance are devoted to eligible uses, the attorney general has the power to cause a donee individual or organization to produce records sufficient to determine the actual use of the net proceeds received.
2. Any person or organization receiving gaming proceeds from an eligible organization for a permissible use, and subsequently using ~~such~~ those proceeds for a nonpermissible use, shall reimburse the donor organization for all funds which the attorney general determines is a nonpermissible use under subsection ~~6~~ 7 of North Dakota Century Code section 53-06.1-01.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-13, 53-06.1-17

10-04.1-13-02. Records subject to audit.

1. Any and all records of any organization operating any gaming activity authorized by North Dakota Century Code chapter 53-06.1, or any licensed distributor or manufacturer of gaming equipment, is subject to an audit by the attorney general, without notice, and performed either at the site, upon the premises of the organization or distributor where the records are located, in the attorney general's office, or at a location chosen by the attorney general.
2. In the event of an audit by the attorney general, the organization, distributor, or manufacturer shall immediately provide all such records to the attorney general, provide a place, including a work station, where ~~such~~ that audit may be

performed if necessary, provide a telephone, and render such assistance to the attorney general in auditing such records as may be requested.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-13, 53-06.1-17

10-04.1-13-03. Inspection of premises and records.

1. All sites licensed, any premises in any way connected physically or otherwise with an organization, any distributor facilities, and any manufacturing facilities of any gaming equipment, must at all times be open to inspection by the attorney general or a local law enforcement official.
2. At any time during which games of chance are being conducted at a site, the attorney general or a local law enforcement official may enter upon the site without advance notice and:
 - a. Make a count of all moneys received during which games of chance are being conducted at a site, inspect all receipts for gross proceeds issued by the organization, and inspect all receipts for prizes which have been awarded by the organization.
 - b. Inspect any records of the organization, or of any member that directly participates in the management, operation, or promotion of the gaming activity, or of any employee or volunteer of the organization.
 - c. Inspect, including the dismantling of, all pieces of equipment or parts thereof, which are being used to conduct games of chance.
 - d. When the attorney general finds cause to believe that there is a reasonable probability that the provisions of North Dakota Century Code chapter 53-06.1, including any amendments thereto, or any of the administrative rules, have been or are being violated by the organization, or its employees or volunteers, remove to another location or locations for further inspection and investigation, any and all records and any and all equipment, parts thereof, and devices of any nature, located upon the premises related to the operation of the licensed gaming activity, or any other gaming activity.
3. A receipt must be issued to the organization licensed at the site which must list and describe each record and each piece of equipment, or part thereof, which has been removed from the site.

4. Each such record, piece of equipment, or part thereof, so removed must be returned to the site or to the address of the organization within a reasonable period of time after its removal in as good a condition as it was in when removed, unless the attorney general determines that the record or equipment so removed are necessary for an ongoing investigation of possible violations of the law or administrative rules of the attorney general by the organization.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-06, 53-06.1-15.1, 53-06.1-17

10-04.1-13-04. Denial, suspension, or revocation of licenses. The attorney general may deny a license to any applicant, or may suspend or revoke any and all licenses of any organization, distributor, or manufacturer when ~~such~~ that organization, distributor, or manufacturer:

1. Has violated, failed, or refused to comply with the provisions, requirements, conditions, limitations, or duties imposed by North Dakota Century Code chapter 53-06.1 and any amendments thereto, or any rules adopted or formal directives issued by the attorney general pursuant thereto, or any other law of this state.
2. Knowingly causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the attorney general.
3. Has falsified information on a license application or obtained a license by fraud, trick, misrepresentation, concealment, or through inadvertence or mistake.
4. Denies the attorney general access to any site where games of chance are conducted, or to any facility where games of charitable gaming tickets are manufactured, or who fails promptly to produce to the attorney general for inspection or audit any book, record, or document required by law or administrative rule, or who fails to cooperate in any manner.
5. Fails to display its license on the site where games of chance are conducted at all times during the operation of the gaming activity.
6. Makes a misrepresentation of, or fails to disclose, a material fact to the attorney general.
7. Fails to provide, at the office of the attorney general, any information requested under the administrative rules, law, or formal directives issued by the attorney general within the

time required ~~therefor~~ by applicable administrative rule, law, or formal directives issued by the attorney general; or if no maximum time has been established respecting the particular kind of information by other rule, ~~then~~ within fourteen days after receiving a written request ~~therefor~~ from the attorney general.

8. Has engaged in any act, practice, or course of operation as would operate as a fraud or deceit on any person, or has employed any device, scheme, or artifice to defraud any person.
9. Has again violated, failed, or refused to comply with any of the provisions, requirements, limitations, or duties imposed by North Dakota Century Code chapter 53-06.1 and any amendments thereto, or any administrative rules adopted or formal directives issued by the attorney general pursuant thereto, after having been previously notified by the attorney general, or by local law enforcement officials, that a violation or violations of the same or similar provisions had been, or were being, committed by the organization, distributor, or manufacturer.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-14, 53-06.1-16, 53-06.1-17

10-04.1-13-04.1. ~~Special restriction on lessor. The attorney general may prohibit a lessor from having games of chance conducted at the lessor's site if the lessor:~~ Imposition of monetary fine.

1. ~~Violates any law of this state that reflects on the lessor's good character, honesty, and integrity. The attorney general may impose a monetary fine on a licensed organization, distributor, or manufacturer for violation of any provision of North Dakota Century Code chapter 53-06.1, or violation of any rule adopted under this article. The monetary fine applied to an organization for each violation is a minimum of twenty-five dollars and may not exceed two percent of the organization's average quarterly gross proceeds, or five thousand dollars, whichever is greater. The monetary fine applied to a distributor or manufacturer for each violation is a minimum of one hundred dollars and may not exceed five thousand dollars. The monetary fine may be in addition to or in lieu of a license suspension or revocation.~~
2. ~~Has prior activities, criminal record, reputation, habits, and associations that pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities of gaming. In~~

determining the amount of the monetary fine to be imposed for a violation of law or rule, the attorney general may consider:

- a. The severity of the conduct as indicated by the potential harm to the integrity of lawful gaming.
- b. The culpability of the violator.
- c. The frequency of the violator's failure to comply with the law or rules.
- d. The actual harm caused to integrity of lawful gaming.
- e. Any other factor related to the violation that the attorney general considers important.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-17

10-04.1-13-04.2. Monetary fine citation form. The attorney general may issue to any organization, distributor, or manufacturer licensed with the attorney general, a monetary fine on a citation form prescribed by the attorney general. The amount of the monetary fine must be determined in accordance with the factors listed in subsection 2 of section 10-04.1-13-04.1. The monetary fine must be paid to the attorney general within twenty-one days of the date on which the citation was issued. Failure to pay the monetary fine within twenty-one days may subject the organization's, distributor's, or manufacturer's license to be suspended or revoked by the attorney general unless the organization, distributor, or manufacturer appeals the citation and the monetary fine to the attorney general within the twenty-one-day period.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-13-04.3. Monetary fine appeal procedures.

1. An appeal of a monetary fine must contain the name and complete address of the organization, distributor, or manufacturer that received a citation, the date on which the citation was issued, the amount of the monetary fine, specific reasons why the monetary fine should not be paid, and signature of the person who prepared the appeal.
2. Appeals of monetary fines may be referred to the attorney general for purposes of a hearing. The organization, distributor, or manufacturer has the burden of proving by substantial evidence that the payment of the monetary fine is inappropriate. The organization, distributor, or manufacturer

may be represented by counsel, and may present documents and other relevant evidence to support its position.

3. The attorney general shall issue a determination within thirty days of the date of the hearing as to whether or not the monetary fine should be imposed, including findings of fact and conclusions of law.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-13-05. Investigative powers of the attorney general. When it appears to the attorney general that a person has engaged in, or is engaging in any practice declared to be unlawful by North Dakota Century Code chapter 53-06.1, or any of the provisions of these rules, or when the attorney general believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in, any such practice, the attorney general may:

1. Require ~~such~~ that person to file on such forms as the attorney general prescribes a statement or report in writing, under oath or otherwise, as to all the facts and circumstances and such other data and information as the attorney general may deem necessary.
2. Examine under oath any person in connection with the investigation.
3. Impound any gaming ~~or~~ and general financial record, book, document, account, or paper material to ~~such~~ that practice and retain the same in the attorney general's possession until the completion of all proceedings undertaken under this article or in the courts. At the attorney general's discretion, the attorney general may make a written request for a copy of the items referenced by this subsection and, if requested, the organization shall provide the copy within twenty-four hours of the request.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-01. License required.

1. No person may sell, offer for sale, or otherwise provide gaming equipment to licensed organizations or organizations which have been issued a local permit, for use in connection with games of chance in this state without first obtaining a distributor license from the attorney general.

2. A license ~~or local permit~~ may not be transferred to any other person.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-03. License fee and reapplication date.

1. The annual distributor license fee is one thousand five hundred dollars.
2. All distributor licenses must be reapplied for on April first of each year. There may be no proration of the license fee.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-04. Distributor personnel supplemental. The "distributor personnel supplemental" form must include at least the following information:

1. Name of person.
2. Name of distributor.
3. Address, county of citizenship, date of birth, place of birth, and name of spouse.
4. All other current occupations along with the employer's name, address, type of business, and the position held within that business.
5. List of all criminal charges and convictions, if any.
6. List of all places of residence in the last ten years.
7. Information on this form must be submitted as an affidavit.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-05. Restrictions on distributorship interest.

1. No organization which is licensed or which has been issued a local permit to conduct games of chance may be a distributor.

2. No person who is an officer, director, manager, gaming manager, or member of the governing board of any licensed organization or any organization which has been issued a local permit may be an officer, director, shareholder, (directly or indirectly), proprietor, consultant, or employee of a distributorship, nor may such that person have any financial interest whatsoever in such that distributorship.
3. No person who is an officer, director, shareholder (directly or indirectly), partner, or proprietor of a wholesale alcoholic beverage business may be an officer, director, shareholder, partner, proprietor, or employee of a distributorship, nor may such that person have any financial interest whatsoever in such that distributorship.
4. No distributor or person having a financial interest in a distributorship may be a lessor of premises a gaming site, directly or indirectly, to a licensee an organization that is an active customer of that distributorship.
5. The distributor shall establish a permanent office in the state of North Dakota. The distributor's records required to be maintained by this article chapter must be kept at that location.
6. No North Dakota licensed manufacturer of charitable gaming tickets or paper bingo cards may be a North Dakota licensed distributor.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-07. Restrictions of distributor employee.

1. No employee of a distributorship may be a gaming employee, consultant, or volunteer of an organization unless such that employee has first made a full written disclosure of the employee's distributorship employment to the organization.
2. No employee of a distributorship may be a law enforcement official.
3. It is recommended that no ~~No~~ employee or agent of a distributorship may play games a game of chance charitable gaming tickets or punchboard at any of the sites of an organization if that organization is a customer of the distributorship licensed gaming site in North Dakota.
4. No distributor initially licensed or employee initially employed on June 1, 1990, or thereafter of a distributorship

may provide bookkeeping services to an organization unless the distributor or employee first receives orientation from the attorney general as provided by section 10-04.1-03-06.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-08. No division of territories allowed. No distributor may enter into any agreement, expressed or implied, with any other distributor that restricts either of them ~~is restricted~~ in the operation and carrying on of business to a specific geographic area, ~~or areas~~ particular organization, and such a restriction may not be a condition of any sales between a distributor and any other distributor.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-08.1. Required orientation for licensed distributor. A distributor first licensed by the attorney general to sell, offer for sale, or otherwise provide gaming equipment on December 1, 1989, and thereafter, shall request, within the first quarter of the commencement of business, orientation from the attorney general. Any distributor licensed by the attorney general to sell gaming equipment shall participate, when requested by the attorney general, in orientation. The orientation must take place at a location chosen by the attorney general and must include games of chance administrative rules and law, recordkeeping requirements, and preparation of the sales invoice and gaming stamp log.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-08.2. Orientation may be required for a new bookkeeper. The attorney general may require that a new bookkeeper employed by a distributor, for compensation or not, who is principally responsible for complying with the recordkeeping requirements of North Dakota Century Code chapter 53-06.1 and of this chapter, receive orientation from the attorney general. The bookkeeper shall notify, within ninety days of the date of the bookkeeper's employment, the attorney general in writing of the bookkeeper's employment. If required, the bookkeeper's orientation must take place at a location chosen by the attorney general and must include games of chance administrative rules and law, recordkeeping requirements, and preparation of the sales invoice and gaming stamp log. A bookkeeper is a person who is responsible for recording accounting and management data of a distributorship in a prescribed manner. Responsibilities may

include compliance with the recordkeeping system prescribed by this chapter, preparation of reports based on the recorded data, and verification that the distributor's internal controls are complied with.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-09. Inventory control. Each A distributor shall establish a written system of accounting internal control system relative to inventory of deals of charitable gaming tickets, including club specials, tip boards, and seal boards, punchboards, and sports-pool boards, calcutta boards, and series of rafflewheel tickets that are purchased or otherwise received from an affiliated company, North Dakota licensed distributor, and North Dakota licensed manufacturer or returned as a credit. This system must provide a plan of organization and a description of procedures and records designed to provide reasonable assurance that the following general objectives will be attained:

1. Transactions are executed in accordance with management's general or specific authorization.
2. Transactions are recorded as necessary to properly record purchases, sales, returns, and other dispositions, and to maintain accountability for inventory.
3. Access to inventory is permitted only in accordance with management's authorization.
4. The recorded accountability for inventory is compared with the existing inventory at reasonable intervals and appropriate action is taken with respect to differences.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-10. Special purchases restrictions.

1. A distributor may not purchase or be provided any deal of charitable gaming tickets, including club specials special, tip boards board, and seal boards board, or paper-type punchboard from a manufacturer of deals or punchboards, or paper bingo cards from a manufacturer of paper bingo cards unless both of the following conditions are met:
 - ~~+~~ a. The manufacturer has first registered its label or trademark with the attorney general.

- ~~a.~~ b. The manufacturer has first been licensed by the attorney general. The distributor is responsible for determining whether a manufacturer is licensed.
- 2. A distributor may not purchase or be provided any gaming equipment from an out-of-state affiliated company unless all of the following conditions are met:
 - a. The affiliated company must be a wholly owned subsidiary or the parent company of the North Dakota licensed distributor.
 - b. The affiliated company must have originally purchased the gaming equipment directly from a North Dakota licensed manufacturer. The distributor is responsible for determining whether a manufacturer is licensed.
 - c. The purchased gaming equipment is properly accounted for as required by section 10-04.1-14-23.
- 3. A distributor may not purchase or be provided any gaming equipment from an out-of-state distributor unless both of the following conditions are met:
 - a. The out-of-state distributor must have the manufacturer of the gaming equipment ship the gaming equipment directly from the manufacturer to the North Dakota licensed distributor.
 - b. The manufacturer of the gaming equipment must be licensed by the attorney general. The distributor is responsible for determining whether a manufacturer is licensed.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-11. Special sales restrictions - Charitable gaming tickets and paper-type punchboard. No distributor, with knowledge or in circumstances where the distributor reasonably should have known, may possess, display, sell, or otherwise provide to any licensed organization any deal of charitable gaming tickets, including club specials and tip boards, and paper-type punchboard:

- 1. Which does not conform to the requirements of sections 10-04.1-15-07 and 10-04.1-15-08 related to the minimum quality standards for the manufacture of games of charitable gaming tickets and paper-type punchboards.

2. Which has the manufacturer's or distributor's seal broken on the manufacturer's games' package, box, bag, or other container (see subsection 2.2 of section 10-04.1-14-18).
3. Which contains tickets or punches that have winner protection features although such the tickets or punches of that game are not winning tickets or punches.
4. Which has been prohibited by the attorney general from sale or play within this state.
5. For a club special and tip board, which has an ideal gross proceeds exceeding two hundred dollars.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-12. Special sales and rent restrictions - Coin-operated dispensing device.

1. A distributor may not sell or otherwise provide to any licensed organization any coin-operated dispensing device for the dispensing of charitable gaming tickets ~~that does not conform to all requirements of this state's laws and rules, including formal directives of the attorney general. A coin-operated dispensing device sold or otherwise provided must unless the device:~~
 - a. ~~Be~~ Is constructed so as to allow a player to clearly see the majority of the charitable gaming tickets within the dispensing device prior to purchasing a charitable gaming ticket.
 - b. ~~Be~~ Is constructed with permanent lines or markings on the face of the device which are clearly visible to the player and which divide the face into sections, each of which approximate the thickness of twenty-five charitable gaming tickets, ~~so that the player can determine how many charitable gaming tickets remain within the device.~~
 - c. ~~Be~~ Is constructed to enable an organization to easily render the dispensing device inoperable by the use of a locking device, security cover or latch, or any other control mechanism. See ~~subdivision b~~ of subsection ~~+ 2~~ of section 10-04.1-08-07.
2. A distributor may not rent to any licensed organization any coin-operated dispensing device unless the payment of rent stipulated in the rental agreement is for a fixed dollar rate per month or other agreed duration. Graduated rate

arrangements and percentage rates (for example, based on gaming activity) are prohibited.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-13. Special sales restrictions - Twenty-one drop box. No distributor may sell or otherwise provide to any licensed organization any twenty-one drop box that does not conform to the requirements of this section. A drop box must be a double-locking or triple-locking removable metal container and have:

1. ~~A~~ One lock that secures the drop box to a twenty-one table, and ~~a~~ one or two separate ~~lock~~ locks which ~~secures~~ secure the contents placed into the drop box. The key to each ~~lock~~ of the two or three locks must be different from each of the other locks.
2. The key to each lock different from the other keys, including the key which secures the drop box to a twenty-one table. It is recommended that the drop box have two separate locks which secure the contents placed into the drop box.
- ~~3.~~ A slot opening through which currency and forms can be inserted into the drop box. The slot of the drop box may not exceed three and one-half inches [88.90 millimeters] in length and one-half inch [38.10 millimeters] in width.
- ~~4.~~ 3. A spring-loaded mechanical device that will automatically close and lock the slot opening upon removal of the drop box from a twenty-one table. The spring-loaded mechanism may not be accessible from outside the drop box in a manner that would jeopardize the security of the drop box.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-13.1. Special manufacture and sales restrictions - Twenty-one chips. Except for the same organization, no manufacturer or distributor of twenty-one chips may manufacture, distribute, or otherwise provide chips usable in the game twenty-one to any distributor or organization when those chips are identical in physical characteristic of chips previously manufactured by that manufacturer or previously distributed or otherwise provided by that distributor.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-14. Sales promotion. No distributor may use as a sales promotion any statement, demonstration, or implication that any certain portion of a deal of charitable gaming tickets, including club specials and special, or tip boards, board contains more winners than other portions of the deal or that any deal may be played by an organization in a particular manner that would give the organization any advantage in selling more of the charitable gaming tickets before having to pay out winners.

History: Effective November 1, 1986; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-16. Prices charged by distributors not to be fixed by agreement. No distributor may enter into any agreement, expressed or implied, with any other distributor to fix the price at which any gaming equipment may be sold, or for which services in connection therewith may be rendered. The price of these items in the competitive marketplace must be established by each distributor for the gaming equipment and services offered by each, and must not be established, directly or indirectly, in concert with one another.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-17. Distributors to sell only to other licensed distributors, licensed organizations, or organizations which have been issued a local permit. With the exception of section 10-04.1-14-19, no distributor may sell or otherwise provide any gaming equipment or supplies for games of chance to any distributor which has not first been licensed by the attorney general, any organization which has not first been licensed by the attorney general, or has been issued a local permit by the local governing body to conduct bingo, raffles, or sports-pool boards in accordance with this article. The distributor is responsible for determining whether an organization is a licensed organization or an organization which has been issued a local permit.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-18. Marking and identification of equipment for games of chance.

1. The manufacturer's game serial number must appear on all rafflewheel tickets, charitable gaming tickets, punchboards, ~~and~~ sports-pool boards, and calcutta boards. The name of the organization, organization post or lodge number, or other information may appear on ~~such~~ those devices but only in addition to and not in replacement of, the manufacturer's game serial number. Game serial numbers may not be special-ordered, but must be as provided by the manufacturer in its ordinary course of business.
2. Consecutively numbered state gaming stamps ~~will~~ must be ~~furnished to~~ purchased at a price of twenty-five cents each by each distributor by from the attorney general. However, if a distributor voids a state gaming stamp, the distributor may return the voided gaming stamp to the attorney general as a twenty-five cent credit toward the purchase of another gaming stamp. The state gaming stamps must be maintained at the distributor's North Dakota office and may not be taken out of state for any reason.
 - 2.1. For a pull tab (two-ply card with perforated break-open tabs) game and a specialty jar ticket game, the distributor may open the manufacturer's cellophane shrink wrap to access the flare. After the distributor affixes the state gaming stamp to the flare and writes the game's game serial number on the state gaming stamp, the distributor shall replace, if applicable, the flare inside the manufacturer's cellophane shrink wrap. The distributor shall ensure that the opening is permanently sealed or is small and will not allow any person to tamper with the game through the opening.
 - 2.2. Except to determine a game's game serial number, the primary color of the ticket, or to count the number of tickets, no distributor may break a game's permanent adhesive seal or access the charitable gaming tickets inside a game's package, box, bag, or other container. If a manufacturer's seal on the manufacturer's games' package, box, bag, or other container was inadvertently broken due to shipping or handling but the integrity of the game remains intact, the distributor may reseal the game with a distributor permanent adhesive security seal. The seal must be applied to all accessible sides and ensure that the deal's charitable gaming tickets are not accessible from outside the deal's package, box, bag, or other container when the deal is resealed. The distributor shall indicate on the sales invoice that the deal was resealed by the distributor and the reason for the resealing.
 - 2.3. The distributor shall place a state gaming stamp directly upon the front of the flare of each deal of charitable gaming tickets, including club specials, tip boards, and seal boards, upon the flare of each series of rafflewheel ticket cards, upon the flare of each punchboard, upon the sports-pool board, and upon the flare of each calcutta board that is sold or

otherwise distributed to licensed organizations or organizations which have been issued a local permit. The affixing of the state gaming stamp must be done in the state of North Dakota. This subsection applies to sales by distributors to certain purchasers as provided by section 10-04.1-14-19.

3. The distributor shall write in a legible manner the manufacturer's game serial number in ink in the space provided on the state gaming stamp. Once the distributor has written the game serial number on the state gaming stamp, the distributor may not change or erase the written game serial number. If the written game serial number is incorrect, the state gaming stamp must be voided. The game serial number to be written on the flare of a series of rafflewheel ticket cards must be the game serial number of the lowest numbered rafflewheel ticket card in the series. If ~~the~~ a sports-pool board, seal board, or calcutta board does not have a manufacturer's game serial number assigned to it, the distributor then shall assign a game serial number to it. The distributor is responsible for placing a state gaming stamp directly upon the front of the flare of each deal of charitable gaming tickets, including club specials, tip boards, and seal boards, and upon the flare of each series of rafflewheel ticket cards, and upon the flare of each punchboard, and upon the sports-pool board that is sold or otherwise distributed to licensed organizations or organizations which have been issued a local permit. The affixing of the state gaming stamp must be done in the state of North Dakota. This rule does not apply to sales by distributors to certain purchasers as provided by section 10-04.1-14-19.
4. A printed flare will be furnished to the organization with each deal of charitable gaming tickets, including club specials and special, tip boards board, series of rafflewheel ticket cards, and punchboard. Each flare must fully describe the name of the game, specify the cost per play, specify the denominations of winners, and specify the particular number of winners by each denomination either by numerical designations or through the display of a particular number of symbols that represent the particular number of winners, and winning number, symbol, or set of symbols. This information must be mechanically or electronically preprinted on the flare. A last sale feature on a flare must be indicated either by a permanently affixed sticker containing a preprinted designation of last sale feature, prize value of the last sale feature, and distributor's name or license number, or both, or any other method prescribed by the attorney general.
- 4.1. For each game deal of charitable gaming tickets involving single-folded (jar ticket) or banded tickets (jar ticket), the distributor shall provide a game information sheet which may

be a sheet separate from the deal's flare containing the following information or the following information must be printed on the front or back side of the deal's flare:

- a. Name of the game.
 - b. Ideal gross proceeds.
 - c. Ideal prizes, by denomination, including any last sale feature.
 - d. Ideal adjusted gross proceeds.
 - e. Cost per play.
 - f. Number of tickets.
5. The distributor shall indicate the following information on each deal of club specials and tip boards:
- a. Cost per play.
 - b. Ideal prizes by denomination, including any last sale feature.
6. The distributor shall indicate the following information on each sports-pool board sold if ~~such~~ that information is known to the distributor:
- a. Cost per play.
 - b. Ideal prizes.
- 6.1. The distributor shall indicate the following on the flare of each series of rafflewheel ticket cards:
- a. ~~Cost per play.~~
 - b. ~~The phrase "amount of cash prize \$————" and/or "retail value of merchandise prize \$————".~~
 - c. ~~Game serial number of the lowest numbered rafflewheel ticket card in the series.~~
 - d. Game serial number of the highest numbered rafflewheel ticket card in the series.
 - c. Quantity of rafflewheel ticket cards in the series.
 - e. d. Type of rafflewheel tickets (for example, 40 x 3 x 120).

- 6.2. The phrases "sporting event _____" and "method of prize payout _____" are to be conspicuously printed on each calcutta board sold.
7. The phrases "cost per play \$ _____" and "retail value of prize \$ _____" are to be conspicuously printed on each seal board sold.
 8. State gaming stamps must be placed by a distributor only on items which conform to all requirements of this state's laws and rules and may not be placed upon items prohibited by the attorney general from sale or play within this state.
 9. State gaming stamps must be placed by the distributor only on items which the distributor sells or provides, and may not be transferred or provided to any other distributor.
 10. No person other than a licensed distributor may obtain state gaming stamps from any source. Only licensed distributors may affix state gaming stamps to deals of charitable gaming tickets, ~~punchboards~~ club special, tip board, seal board, punchboard, sports-pool boards board, calcutta board, or the master flare of a series of rafflewheel ticket cards.
 11. If and at the time of a liquidation, bankruptcy, or closing of a distributorship by any other means, including a nonrenewal of a license to be a distributor, or a relinquishment of the license, the distributor shall return any and all unused state gaming stamps in the distributor's possession to the attorney general within five days after ~~cessation~~ discontinuance of business.
 12. If a distributor is notified by an organization that the game serial number of a deal, punchboard, series of rafflewheel tickets, calcutta board, or sports-pool board does not correspond to the game serial number written on the state gaming stamp by the distributor, the distributor shall immediately:
 - a. Correct the game serial number written on the state gaming stamp pursuant to established procedures of the attorney general.
 - b. Sign a form prescribed by the attorney general (see subdivision c of subsection 3 of section 10-04.1-08-04) acknowledging that the distributor corrected the game serial number written on the state gaming stamp.
 - c. Notify the attorney general of the corrected game serial number corresponding to the respective state gaming stamp number pursuant to established procedures of the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-14-19. Distributors' sales to Indian tribes, and tribal reservation United States military bases, and out-of-state purchasers. Gaming equipment and supplies sold by distributors to Indian tribes for use on the Indian reservation, and tribal reservation United States military bases for use on the military base, and out-of-state purchasers for use on the Indian reservation or out of state must either be shipped directly to the Indian reservation tribe, United States military base, or out-of-state site or the distributor must shall verify that the purchaser is from represents the Indian reservation tribe, represents the United States military base, or is from out of state. This verification must include written documentation of the purchaser's identity including at least the following:

1. If the purchaser represents an Indian tribe, the tribe's license number and purchaser's full name, street address, city, state, and zip code.
2. If the purchaser represents the United States military base, the purchaser's full name, rank or title, street address, city, state, and zip code.
3. If the purchaser is from out of state, the purchaser's full name, street address, city, state, and zip code. If this purchaser is a corporate entity, including a nonprofit organization, include the corporation's federal identification number.
4. Driver's license number, including state of license registration. This information must be identified by the distributor directly from the purchaser's pictured driver's license. If the purchaser does not have a pictured driver's license, the distributor shall indicate the purchaser's full name, street address, city, state, and zip code, which must be taken from at least two forms of identification. The distributor shall determine the real identity of the purchaser and require such additional proof of identification from a reliable source as is necessary to properly establish the purchaser's identity. The distributor may not sell any gaming equipment or supplies unless and until the purchaser has fully and accurately furnished to the distributor all information required by this section.
5. Social security number unless the purchaser's driver's license number is the same as the social security number.
6. Delivery information.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-20. Distributors' sales of promotional paper bingo cards and charitable gaming tickets. No distributor may sell, offer for sale, or otherwise provide promotional paper bingo cards or charitable gaming tickets to licensed organizations or any person unless each paper bingo card or ticket conspicuously contains a phrase "promotional use only", "happy hour", or similar phrase and that the paper bingo card or ticket states that no purchase is necessary to receive a promotional paper bingo card or ticket. Also, no number, symbol, or set of symbols of any nonpromotional charitable gaming tickets may be used by a manufacturer on any promotional tickets. The game's flare must indicate that the game is for promotional purposes only and that no purchase is necessary to receive a ticket.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-22. Return of merchandise - Voiding of state gaming stamp. If an organization returns a purchased deal of charitable gaming tickets, including club specials, tip boards, and seal boards, punchboard, ~~or~~ sports-pool board, series of rafflewheel ticket cards, or calcutta board to a distributor for ~~whatever~~ any reason, the distributor shall void the North Dakota gaming stamp and notify the attorney general of the voiding and the reason for, on a form prescribed by the attorney general. The distributor shall return all voided North Dakota gaming stamps to the attorney general. If the distributor resells or reissues the merchandise, the distributor shall place a new North Dakota gaming stamp upon the flare of the deal, punchboard, ~~or~~ sports-pool board, or calcutta board that is sold or otherwise provided to the organization.

History: Effective November 1, 1986; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-22.1. Reconciliation of inventory control records.

1. The distributor shall, on at least a semiannual basis, manually compare its inventory control records (see section 10-04.1-14-09) of deals of charitable gaming tickets, club specials, tip boards, seal boards, punchboards, sports-pool boards, calcutta boards, and series of rafflewheel tickets that are purchased or otherwise received from an affiliated company, North Dakota licensed distributor, North Dakota licensed manufacturer, or returned as a credit and sold or otherwise provided to licensed organizations, organizations that have been issued a local permit, Indian tribes, United

States military bases, and out-of-state purchasers in relation to the distributor's actual physical inventory. The distributor shall reconcile any difference. The reconciliation must be performed by a person who is independent of the person who has custody of the inventory.

2. The distributor shall document, in writing, that the reconciliation was performed. The documentation must include at least the following information:
 - a. Name and job position of the person who performed the reconciliation.
 - b. Date the reconciliation is conducted.
 - c. Procedure employed.
 - d. Result and corrective action taken.
 - e. Signature of the person who performed the reconciliation.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-14-23. Recordkeeping system required. Every licensed distributor shall maintain complete, accurate, and legible general accounting records with detailed, supporting, subsidiary records sufficient to furnish information regarding all transactions pertaining to the purchase and sale of gaming equipment and supplies. These records must be retained for a period of three years unless the distributor is released by the attorney general from this requirement. The records must be maintained in the state of North Dakota. These records must be prepared on the same basis as the distributor's federal income tax return, and must include the following records as a minimum by month:

1. Purchase invoices for all gaming equipment and supplies for games of chance purchased for distribution to licensed organizations or, organizations which have been issued a local permit, Indian tribes, United States military bases, and out-of-state purchasers.
2. Sales invoices for all gaming equipment, supplies, and services for games of chance distributed sold or rendered otherwise provided to licensed organizations or organizations which have been issued a local permit, Indian tribes, United States military bases, out-of-state purchasers, affiliated company, and other North Dakota licensed distributors. Gaming equipment and supplies sold or otherwise provided to licensed organizations or organizations which have been issued a local permit at no charge, Indian tribes, United States military

bases, out-of-state purchasers, affiliated company, and other North Dakota licensed distributors must be recorded on a North Dakota sales invoice. The sales invoices must be prepared legibly on a standard form prescribed by the attorney general and must include at least the following information as a minimum:

- a. License number of the distributor.
- b. The complete business name and address of the licensed organization or organization which has been issued a local permit. If an Indian tribe is the purchaser, the complete name and address of the Indian tribe, the tribe's federal identification number, and delivery information.
- c. License or permit number of the organization or tribal license number of the Indian tribe.
- d. Invoice number.
- e. Invoice date.
- f. Date shipped.
- g. Purchase order number, if available.
- h. An indication for a credit memo.
- i. Quantity (by the number of deals for charitable gaming tickets, by the number of boards for punchboards and, sports pools, and calcutta boards, and by the number of series of rafflewheel ticket cards).
- j. A complete description of each item of equipment or supplies sold, including the name of game and whether the item is a deal of charitable gaming tickets, club special, tip board, seal board, punchboard, sports-pool board, calcutta board, or series of rafflewheel ticket cards. For a deal of charitable gaming tickets involving pull tabs, the description must include the manufacturer's form number. For a series of rafflewheel ticket cards, the description must include the specific number of rafflewheel ticket cards within each series and the specific number of rafflewheel tickets on each card. For sales to Indian tribes, United States military bases, and out-of-state purchasers, the game serial number of each game must be included.
- k. Gaming stamp numbers.
- l. The ideal gross proceeds for each different deal, board, or game series of rafflewheel tickets ticket cards.

- m. The ideal adjusted gross proceeds for each different deal, board, or game series of rafflewheel ~~tickets~~ ticket cards.
 - n. The value of a last sale feature, if applicable.
 - o. If applicable, an indication that the deal was resealed by the distributor and the reason for the resealing.
3. ~~Sales~~ All sales invoices must meet the following criteria:
- a. Prenumbered consecutively using a number not less than four digits/characters. The sales invoice number must be preprinted by automated printing equipment or printed by data processing equipment.
 - b. The sales invoice must be prepared in at least three parts and distributed and maintained as follows:
 - (1) One must be issued to the customer.
 - (2) One must be retained in an invoice file by customer name.
 - (3) One must be sent to the attorney general in a manner that accounts for each and every invoice numerically, including voids.
 - c. Credit memos for returned items must be prepared in the same detail as provided by subdivisions a and b of subsection 3. Credit memos must represent only returned items. No distributor may accept deals of charitable gaming tickets, including club specials, tip boards, and seal boards, games of rafflewheel tickets, punchboards, ~~and~~ sports-pool boards, and calcutta boards unless that distributor initially sold those same items to the licensed ~~or authorized~~ organization or organization which has been issued a local permit.
4. Sales journal which must include at least the following:
- a. The date of the sale.
 - b. The sales invoice number of the sale.
 - c. The name of the organization or distributor remitting the payment.
 - d. Total amount of the sales invoice.
5. Cash receipts journal which must record not only cash sales, but also cash received from all sources, and must include at least the following:

- a. The date the payment was received.
 - b. The name of the organization or distributor remitting the payment.
 - c. The amount of payment received.
6. Cash payments journal (check register) which must include a recording of all checks issued by the distributor, cash payments made by the distributor, or payment made by any other means and must include at least the following:
- a. The date the check was issued or payment made.
 - b. The number of the check issued.
 - c. The name of the payee.
 - d. Expenses categorized by type.

All expenses by the distributor must be documented by invoices or other appropriate supporting documents.

7. Gaming stamp log in which the North Dakota gaming stamp numbers and the manufacturer's game serial numbers are legibly recorded must be maintained on a standard form prescribed by the attorney general.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-24. Distributors' information reports. Each distributor shall file a copy of each sales invoice, as described ~~in~~ by subsection 2 of section 10-04.1-14-23, ~~along with~~ the gaming stamp log described ~~in~~ by subsection 7 of section 10-04.1-14-23, ~~on a time basis prescribed by the attorney general and voided state gaming stamps~~. They must be filed by the fifth business day of the week following the ~~semimonthly~~ monthly period in which each sales invoice and gaming stamp log were prepared and the monthly period in which a state gaming stamp was voided. A catalog of all gaming equipment and supplies for games of chance offered to eligible organizations must be furnished to the attorney general and must be updated monthly by the distributors.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-14-25. Examination of books and records. The attorney general ~~and the attorney general's agents have~~ has the ~~power~~ authority to examine or cause to be examined the books and records of any distributor or affiliated company to the extent that ~~such~~ those books and records relate to any transaction connected to the sale of gaming equipment in the state of North Dakota or to information that is required to be furnished to the attorney general under the statutes and regulations pertaining to games of chance. No distributor or affiliated company may prohibit, interfere with, or otherwise impede ~~such~~ that examination but shall cooperate and assist with ~~such~~ that examination and provide ~~such~~ that information to the attorney general as may be requested.

History: Effective November 1, 1986; amended effective October 1, 1987; June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-15.1, 53-06.1-17

10-04.1-14-26. Administrative or criminal complaint in another state - Notification. If an administrative or criminal complaint has been filed in another state against a distributor, that distributor shall notify the attorney general of the complaint in writing within thirty days of the date of the complaint. If the complaint is sustained, the attorney general may suspend or revoke the distributor's North Dakota license.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-15-02. License application information. Annual application must be made for a charitable gaming ticket manufacturer's license. The annual licensing period is from April first through March thirty-first. The application must be on a form prescribed by the attorney general and must contain such necessary and reasonable information as the attorney general requires, including the following information, as well as all other information required elsewhere in this article. The application must include at least the information required by this section except that the information required by subsection 6 only needs to be provided with the initial application:

1. Name and address of any subsidiary company and a description of its general business.
2. Name and address of each of the manufacturer's separate locations manufacturing games of charitable gaming tickets.
3. ~~A list~~ List of all distributors of games of charitable gaming tickets, and of all businesses or organizations located within the state of North Dakota with which the manufacturer transacts business. Include details of any financial

interest with ~~such~~ those distributors, businesses, or organizations.

4. A ~~clear~~ Clear and legible example of the label or trademark printed on manufactured charitable gaming tickets.
5. A ~~consent~~ Consent by the manufacturer to allow the attorney general ~~or agents of the attorney general~~ to enter and inspect the facility in which charitable gaming tickets are manufactured.
6. Copy of the "Certificate of Authority" issued by the North Dakota secretary of state evidencing that a corporation foreign to North Dakota has complied with North Dakota Century Code chapter 10-22.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-15-03. License fee and reapplication date.

1. The annual manufacturer's license fee is two ~~hundred fifty~~ thousand dollars. If a person is licensed as a manufacturer of charitable gaming tickets and as a manufacturer of paper bingo cards (see chapter 10-04.1-16), only one annual license fee of two thousand dollars is required.
2. All manufacturers' licenses must be reapplied for on April first of each year. There may be no proration of the license fee.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-15-04. Manufacture. Other than a manufacturer of charitable gaming tickets required to be licensed by the attorney general under subsection 1 of section 10-04.1-15-01, any person within the state of North Dakota manufacturing gaming equipment for games of chance for use in or out of this state shall first register ~~such~~ that manufacturing activity with the attorney general before selling, marketing, or otherwise distributing ~~such~~ that equipment. Any licensed organization or organization which has been issued a local permit which manufactures gaming equipment for games of chance for its own use shall also first register ~~such~~ that manufacturing activity with the attorney general.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-15-05. Special sales restriction.

1. A manufacturer may not sell or otherwise provide any deal of charitable gaming tickets, including club specials, tip boards, and seal boards, or punchboard to a distributor unless the manufacturer has first registered its label or trademark with the attorney general. A manufacturer of charitable gaming tickets shall register its label or trademark in accordance with subsection 4 of section 10-04.1-15-02.
2. A manufacturer may not sell or ~~otherwise~~ provide any deal of charitable gaming tickets to a licensed distributor unless the ~~deal has affixed thereto a national association of fundraising ticket manufacturers (NAFTM) seal of approval or the manufacturer has been inspected either by the attorney general or on an annual basis, agent of the attorney general, or by an independent testing organization selected or approved by the attorney general. There must be an initial inspection and periodic inspections thereafter.~~

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-15-06. Manufacturers to sell only to licensed distributors. No manufacturer or any other person may sell or otherwise provide any gaming equipment for games of chance to any distributor unless that distributor has first been licensed by the attorney general. The manufacturer is responsible for determining whether a distributor is licensed. The attorney general shall notify the manufacturers when a distributor's license has been suspended or revoked.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-15-07. Minimum quality standards for the manufacture of ~~games~~ deals of charitable gaming tickets. Every licensed manufacturer of ~~games~~ deals of charitable gaming tickets, excluding a seal board, for sale in the state of North Dakota shall manufacture ~~such~~ those games according to the following standards to ensure that the games are honest and fair to all players and that the tickets are secure against invasion by any practical method:

1. Construction.
 - a. The game must be designed, constructed, glued, and assembled in such a manner as to prevent the determination of a winning ticket without first removing the tabs or otherwise uncovering the symbols or numbers as intended.

- b. Each ticket in a game must bear the same game serial number. There may not be more than one game serial number in one game.
 - c. The numbers or symbols must be fully visible in the window and must be centered so that no part of a symbol or number remains covered when the tab is removed.
2. **Opacity.** Concealed numbers or symbols must not be able to be viewed, or winning numbers or symbols determined, from the outside of the charitable gaming ticket using a high intensity lamp of five hundred watts. Protection must be provided by using opaque paper stock or by use of an aluminum foil laminate.
3. **Color.** It must not be possible to detect or pick out winning tickets from losing tickets through variations in printing graphics or colors, especially those involving different printing plates.
4. **Printed information.** The minimum information printed on a charitable gaming ticket must be as follows, except that subdivisions b, c, d, and e do not need to be applied to a folded or banded jar ~~tickets~~ ticket or to a two-ply card with only one perforated break-open tab (pull tab) which measures one and one-quarter inch [31.7 millimeters] by two and one-quarter inch [57.1 millimeters] or less in size:
 - a. Name of manufacturer or its distinctive logo.
 - b. Name of game.
 - c. Manufacturer's form number.
 - d. Price for each charitable gaming ticket.
 - e. Number of winning tickets and respective winning numbers or symbols, and prize amounts, or a flare must be included with the game providing that information.
 - f. Unique minimum five-digit game serial number, printed on the game information side of the ticket. The same game serial number must not be repeated on the same form number for three years.
5. **Winner protection.** A unique symbol or printed security device, such as a specific number keyed to a particular winning ticket, or the name of the symbol or some of the symbol colors changed for a winner, or other similar protection must be placed in the winning windows of winning tickets. This does not apply to numeral games.

6. Randomization. The game must be assembled so that no placement of winning or losing tickets exists that allows the possibility of prize manipulation, or "pick out".
7. Guillotine cutting. It must not be possible to isolate winning or potential winning tickets by variations in size or the appearance of a cut edge of the tickets comprising a particular game.
8. Packaging.
 - a. Each ~~game's~~ deal's package, box, bag, or other container must be securely sealed on all accessible sides at the factory with a seal including which includes a written warning to the purchaser (organization) that the game may have been tampered with if the package, box, bag, or container was received by the purchaser with the seal broken. The seal must ensure that the deal's charitable gaming tickets are not accessible from outside the deal's package, box, bag, or other container when the deal is sealed. The required seal may be a manufacturer's cellophane shrink wrap or a permanent adhesive seal on all accessible sides of the package, box, bag, or container. For jar tickets packaged in a bag, the glue used to seal the flap of the bag must be permanent adhesive glue.
 - b. A game's serial number must be clearly and legibly placed on the outside of the game's package, box, bag, or other container or be able to be clearly viewed from the outside of the package, box, or other container.
 - c. For games shipped to the state of North Dakota, the flare for ~~the~~ a pull tab (two-ply card with perforated break-open tabs) game and a specialty jar ticket game must be located on the outside of each game's sealed package, box, bag, or other container so that the seal on the package, box, bag, or other container will not be broken to access the flare in order for the distributor to affix the state gaming stamp to the flare.

History: Effective October 1, 1987; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-15-08. Minimum quality standards for the manufacture of paper-type punchboards. Every manufacturer of paper-type punchboards shall manufacture, assemble, and package each paper-type punchboard so that the winning punches, or approximate location of any winning punches, cannot be determined in advance of punching the paper-type punchboard in any manner or by any device, including, but not limited to, any patterns in manufacture, assembly, packaging, or by markings. Winning punches must be distributed and mixed among all other punches in

the paper-type punchboard. The paper-type punchboard must be manufactured with special care so as to eliminate any pattern as between paper-type punchboards, or portions of paper-type punchboards, from which the location or approximate location of the winning punches may be determined.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

10-04.1-15-09.1. Ban or recall of defective deals of charitable gaming tickets.

1. If the attorney general determines that deals of charitable gaming tickets for sale in North Dakota do not meet the minimum quality standards prescribed by section 10-04.1-15-07, the attorney general may order all defective deals and all similarly constructed or printed deals in North Dakota to be immediately recalled by the manufacturer or banned.
2. If the attorney general orders such a ban or recall, the manufacturer of the deal must first be notified verbally regarding the deals to be banned or recalled, reason for the ban or recall, effective date of the ban or recall, and any specific requirements. The verbal notification must be followed with a written notification. Immediately upon the verbal notification, the manufacturer shall cease sale of that deal in the state and initiate actions to ensure complete compliance with the ban or recall. The manufacturer shall notify, in writing, all distributors within seventy-two hours of the verbal notice of the deals banned or recalled, effective date of the ban or recall, and arrange for the prompt return of all the defective deals.
3. Distributors, when notified in writing by either the manufacturer or attorney general of the ban or recall, shall immediately stop sales or delivery of the deals. Within seventy-two hours, the distributors shall notify, in writing, the organizations that have purchased the banned or recalled deal during the last thirty days, effective date of the ban or recall, and arrange for the prompt return of all the defective deals. Organizations may not use or continue to have in play any defective deal of charitable gaming tickets after receiving written notification from the distributors.
4. Prior to any reintroduction in the state of any banned or recalled or similar deal, the manufacturer shall first submit the revised deal to the attorney general for review, evaluation, and approval. The attorney general shall notify the manufacturer, in writing, of the approval or disapproval and a copy of the approving letter must be sent by the

manufacturer to the distributor with the next five shipments of the revised deal.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-15-12. ~~Manufacturer appointed agent. Every licensed manufacturer shall appoint a North Dakota licensed distributor as the manufacturer's agent in this state prior to selling or otherwise providing games of charitable gaming tickets in this state. Repealed effective June 1, 1990.~~

History: Effective ~~October 1, 1987.~~
General Authority: ~~NDCC 53-06.1-17~~
Law Implemented: ~~NDCC 53-06.1-14, 53-06.1-17~~

10-04.1-15-12.1. Administrative or criminal complaint in another state - Notification. If an administrative or criminal complaint has been filed in another state against a manufacturer of charitable gaming tickets or punchboards, that manufacturer shall notify the attorney general of the complaint in writing within thirty days of the date of the complaint. If the complaint is sustained, the attorney general may suspend or revoke the manufacturer's North Dakota license.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-15-13. Inspection of manufacturing facility. A manufacturer of charitable gaming tickets shall reimburse the attorney general, ~~or agents of the attorney general,~~ for reasonable costs of transportation, lodging, meals, and other incidental costs incurred in regard to the inspection of the facility in which charitable gaming tickets are manufactured.

History: Effective October 1, 1987; amended effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-15-15. Examination of books and records. The attorney general ~~and the attorney general's agents have~~ has the ~~power~~ authority to examine or cause to be examined the books and records of any manufacturer to the extent that ~~such~~ those books and records relate to any transaction connected to the sale of gaming equipment in the state of North Dakota or to information that is required to be furnished to the attorney general under the statutes and regulations pertaining to games of chance. No manufacturer may prohibit, interfere with, or otherwise impede ~~such~~ that examination but shall cooperate and assist

with ~~such~~ that examination and provide such information to the attorney general as may be requested.

History: Effective October 1, 1987; amended effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-15.1, 53-06.1-17

STAFF COMMENT: Chapters 10-04.1-16 and 10-04.1-17 contain all new material but are not underscored so as to improve readability.

CHAPTER 10-04.1-16
RULES GOVERNING MANUFACTURERS OF PAPER BINGO CARDS

Section

10-04.1-16-01	License Required
10-04.1-16-02	License Application Information
10-04.1-16-03	License Fee and Reapplication Date
10-04.1-16-04	Special Sales Restriction
10-04.1-16-05	Manufacturers to Sell Only to Licensed Distributors
10-04.1-16-06	Minimum Information to be Printed on Manufactured Paper Bingo Cards
10-04.1-16-07	Sales Invoice Required
10-04.1-16-08	Rebate of Purchase Prices by Manufacturer
10-04.1-16-09	Manufacturer Appointed Agent
10-04.1-16-10	Inspection of Manufacturing Facility
10-04.1-16-11	Recordkeeping System Required
10-04.1-16-12	Examination of Books and Records
10-04.1-16-13	Administrative or Criminal Complaint in Another State - Notification

10-04.1-16-01. License required.

1. No manufacturer of paper bingo cards or any other person may sell, offer for sale, or otherwise provide games of paper bingo cards to licensed distributors, for use in connection with games of chance in this state, without first obtaining a manufacturer's license from the attorney general.
2. A manufacturer's license may not be transferred to any other person.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-16-02. License application information. Annual application must be made for a paper bingo cards manufacturer's license. The annual licensing period is from April first through March

thirty-first. The application must be on a form prescribed by the attorney general and must contain such necessary and reasonable information as the attorney general requires. The application must include at least the information required by this section except that the information required by subsection 6 only needs to be provided with the initial application:

1. Name and address of any subsidiary company and a description of its general business.
2. Name and address of each of the manufacturer's separate locations manufacturing games of paper bingo cards.
3. List of all distributors of paper bingo cards, and of all businesses or organizations located within the state of North Dakota with which the manufacturer transacts business. Include details of any financial interest with those distributors, businesses, or organizations.
4. Clear and legible example of the label or trademark printed on manufactured paper bingo cards.
5. Consent by the manufacturer to allow the attorney general to enter and inspect the facility in which paper bingo cards are manufactured.
6. Copy of the "Certificate of Authority" issued by the North Dakota secretary of state evidencing that a corporation foreign to North Dakota has complied with North Dakota Century Code chapter 10-22.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-16-03. License fee and reapplication date.

1. The annual manufacturer's license fee is two thousand dollars. If a person is licensed as a manufacturer of paper bingo cards and as a manufacturer of charitable gaming tickets (see chapter 10-04.1-15), only one annual license fee of two thousand dollars is required.
2. All manufacturers' licenses must be reapplied for before April first of each year. There may be no proration of the license fee.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-16-04. Special sales restriction.

1. A manufacturer may not sell or otherwise provide any paper bingo cards to a distributor unless the manufacturer has first registered its label or trademark with the attorney general. A manufacturer of paper bingo cards shall register its label or trademark in accordance with subsection 4 of section 10-04.1-16-02.
2. A manufacturer must have available for sale or otherwise provide to a licensed distributor a master checkbook covering all card serial numbers for paper bingo cards.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-16-05. Manufacturers to sell only to licensed distributors. No manufacturer or any other person may sell or otherwise provide any paper bingo cards to any distributor unless that distributor has first been licensed by the attorney general. The manufacturer is responsible for determining whether a distributor is licensed.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-16-06. Minimum information to be printed on manufactured paper bingo cards. Every licensed manufacturer that sells, or otherwise provides, paper bingo cards to licensed distributors shall print at least the following information on each manufactured paper bingo card:

1. Name of manufacturer or its distinctive logo.
2. Manufacturer assigned serial number.
3. Manufacturer assigned series number.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-16-07. Sales invoice required. No manufacturer may sell or otherwise provide to a licensed distributor, or accept from a distributor, any paper bingo cards without recording the transaction on a sales invoice.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-16-08. Rebate of purchase prices by manufacturer. Rebates of purchase prices or discounts allowed by a manufacturer must be separately stated on the original sales invoice or separately invoiced on a credit memo referenced to the original sales invoice.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-16-09. Manufacturer appointed agent. Every licensed manufacturer shall appoint a North Dakota resident as the manufacturer's agent in this state prior to selling or otherwise providing paper bingo cards in this state.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

10-04.1-16-10. Inspection of manufacturing facility. A manufacturer of paper bingo cards shall reimburse the attorney general for reasonable costs of transportation, lodging, meals, and other incidental costs incurred in regard to the inspection of the facility in which paper bingo cards are manufactured.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-16-11. Recordkeeping system required. Every licensed manufacturer shall maintain complete, accurate, and legible general accounting records with detailed, supporting, subsidiary records sufficient to furnish information regarding all transactions pertaining to the sale of gaming equipment in this state. These records must be retained for a period of three years unless the manufacturer is released by the attorney general from this requirement as to any particular record.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

10-04.1-16-12. Examination of books and records. The attorney general has the authority to examine, or cause to be examined, the books and records of any manufacturer to the extent that those books and records relate to any transaction connected to the sale of gaming equipment in the state of North Dakota or to information that is required to be furnished to the attorney general under the statutes and

regulations pertaining to games of chance. No manufacturer may prohibit, interfere with, or otherwise impede that examination but shall cooperate and assist with that examination and provide such information to the attorney general as may be requested.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-15.1, 53-06.1-17

10-04.1-16-13. Administrative or criminal complaint in another state - Notification. If an administrative or criminal complaint has been filed in another state against a manufacturer of paper bingo cards, that manufacturer shall notify the attorney general of the complaint in writing within thirty days of the date of the complaint. If the complaint is sustained, the attorney general may suspend or revoke the manufacturer's North Dakota license.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17
Law Implemented: NDCC 53-06.1-17

CHAPTER 10-04.1-17 RULES GOVERNING GAMING SCHOOLS

Section

10-04.1-17-01	Gaming School License Required
10-04.1-17-02	Gaming School License Standards
10-04.1-17-03	Program of Instruction
10-04.1-17-04	Facilities, Supplies, and Equipment
10-04.1-17-05	Recordkeeping System Required

10-04.1-17-01. Gaming school license required.

1. A gaming school is a private entity or nonprofit organization that is in the business to primarily conduct a gaming training program, or education institution, which on a regular and continuing basis provides a program of instruction relating to methods of conducting games of chance, including twenty-one dealing techniques, to persons.
2. No gaming school may enroll any student or offer any training program to the public, or do any other business whatsoever, whether for compensation or not, unless a gaming school license has first been issued to the gaming school by the attorney general.

History: Effective June 1, 1990.
General Authority: NDCC 53-06.1-17, 54-12-01.2

Law Implemented: NDCC 53-06.1-17, 54-12-01.2

10-04.1-17-02. Gaming school license standards.

1. Annual application must be made for a gaming school license. The annual licensing period is from July first through June thirtieth. The license of the school must be displayed prominently in the school.
2. No gaming school license may be issued unless the qualifications of the gaming school have been forwarded to the attorney general along with the license application. The qualifications must include at least:
 - a. Its good reputation for honesty and integrity.
 - b. The adequacy of its program of instruction to qualify students for employment in one or more specific occupations related to gaming or to upgrade the skill and knowledge of its students in regard to gaming.
 - c. The adequacy of its proposed facilities, supplies, and equipment to provide thorough instruction and training to the students enrolled.
 - d. If the gaming school is a corporation, that it either was incorporated in this state or is registered with the North Dakota secretary of state to do business in this state.
 - e. The gaming school shall maintain an office in this state and shall designate an agent.
 - f. The gaming school is adequately bonded.
3. No gaming school license may be issued until the official school bulletin has been reviewed by the attorney general. The school bulletin must be the official statement of the school's policies, program of instruction, regulations, charges, and fees. The bulletin must be revised and updated as conditions warrant, and a copy must be given to each student prior to or upon enrollment.
4. The owners of the gaming school, management, instructors, and other principal employees must have thorough knowledge of the gaming rules and regulations, and possess the necessary skills, knowledge, and ability to competently and effectively undertake their responsibilities.
5. A change in any item that was a condition of the gaming school license must be approved by the attorney general prior to any announcement or implementation of the change by the gaming school.

6. The name of the gaming school may not contain the words "North Dakota", "state of North Dakota", or "state" unless that school is part of a duly authorized state college or university. The word "county" or "city" or the name of any county or city of this state may not be used in the name of the gaming school unless that school is part of a duly authorized county or city agency.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17, 54-12-01.2

Law Implemented: NDCC 53-06.1-17, 54-12-01.2

10-04.1-17-03. Program of instruction.

1. No gaming school may offer any program of instruction unless approval has first been obtained from the attorney general. No program of instruction may be approved unless the attorney general has first been satisfied that the student-teacher ratio, physical facilities, equipment, and classroom space affords each student an adequate opportunity to master the subject matter and affords the gaming school an adequate opportunity to determine the student's progress by testing and observation. The gaming school shall submit a program outline in sufficient detail for proper evaluation. This outline must include at least:
 - a. The program title.
 - b. The objective the program is intended to meet.
 - c. A description of the program in outline form showing the elements of instruction, number of teacher contact hours of instruction for each element, number of practice hours required, and total number of hours required for completion.
 - d. The entrance requirements, if any, such as education, physical fitness or dexterity, and the procedure for determining compliance with those requirements.
 - e. The proposed tuition and other charges to the student, including a reference to the respective program.
 - f. The maximum number of students that will be permitted to enroll in any one session of the program.
 - g. The capacity of the school for any one session of the program showing the number of classroom spaces, and the number of twenty-one tables and equipment to be utilized.
 - h. The nature of skill and knowledge students are expected to have upon completion of the program, and the testing

program and standards to be used to test students for these competencies.

- i. The names of all instructors and their qualifications with respect to each element of the program they are to teach.
2. Any training or instruction designed to prepare a student for employment as a:
 - a. Dealer of twenty-one must require a minimum of forty hours of training and instruction.
 - b. Pit boss must require the training or instruction for a dealer plus an additional forty hours of training and instruction.
3. Upon satisfactory completion of the specific training or instruction, the gaming school must have, in writing, certification that the student has completed the course or program.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17, 54-12-01.2

Law Implemented: NDCC 53-06.1-17, 54-12-01.2

10-04.1-17-04. Facilities, supplies, and equipment.

1. Physical facilities of the gaming school must meet all applicable state, county, and local laws, regulations, and ordinances with regard to space, safety, health, fire, construction, sanitation, heating, lighting, ventilation, zoning, and environmental protection.
2. All gaming equipment used by a gaming school must conform to the requirements of North Dakota Century Code chapter 53-06.1 and this article. Each gaming school shall keep an itemized current list of all gaming equipment used by it. Each gaming school shall provide adequate security of its premises for the protection of its gaming equipment.
3. Each gaming school must have a telephone number listed in the local telephone directory.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17, 54-12-01.2

Law Implemented: NDCC 53-06.1-17, 54-12-01.2

10-04.1-17-05. Recordkeeping system required.

1. The gaming school shall maintain the following records for a period of three years:
 - a. Copies of all promotional material, bulletins, and advertising.
 - b. Records for each student showing attendance, absences, progress, grades, completion date of course or program of instruction, and such placement information as is known at the time of completion of the course or program.
 - c. A personnel file on each employee.
 - d. Records for each year showing the total number of students applying for entry to the school, accepted in each program, and graduated from each program.
2. A permanent record card must be maintained for each student indefinitely. This card must show the program of instruction attended and the date of completion or withdrawal. If a school is closed, the student's permanent record card must be forwarded to the attorney general.

History: Effective June 1, 1990.

General Authority: NDCC 53-06.1-17, 54-12-01.2

Law Implemented: NDCC 53-06.1-17, 54-12-01.2

JULY 1990

STAFF COMMENT: Article 10-14 contains all new material but is not underscored so as to improve readability.

ARTICLE 10-14

HEARING AID DEALERS AND FITTERS

Chapter	
10-14-01	Definitions
10-14-02	Examinations
10-14-03	Supervision and Training
10-14-04	General Requirements

CHAPTER 10-14-01
DEFINITIONS

Section	
10-14-01-01	Definitions
10-14-01-02	Terms and Duties of Officers
10-14-01-03	Filling Vacancies
10-14-01-04	Identification Cards

10-14-01-01. Definitions.

1. The term "adequate proper testing" as used in North Dakota Century Code section 44-33-12, includes, but is not limited to mean, a minimum of air conduction, bone conduction, pure tone thresholds, and speech audiometry with appropriate masking.

When indicated, these measures should be supplemented with sound field measures, real ear evaluations, or other board-approved methods of verification of improvement in hearing or discrimination.

2. The term "direct supervision" as used in subsection 2 of North Dakota Century Code section 43-33-08 as used in connection with the training of a trainee must be interpreted in accordance with Webster's New Third International Dictionary Unabridged, to mean "to coordinate, direct and inspect at first hand the accomplishments of". This must be interpreted to mean direct onsite supervision in the same facility or location.
3. The term "hearing instrument" refers to new hearing instruments and includes, but is not limited to mean, the serial number provided at the time of delivery, the length of warranty on the hearing instrument, and whether the warranty is backed by the dealer or manufacturer. The term "hearing instrument" also refers to stock hearing instrument, custom shells, earmolds, used or repaired hearing instruments, and includes, but is not limited to mean, the serial number provided at the time of delivery, the length of warranty on the hearing instrument, and whether the warranty is backed by the dealer, manufacturer, or repair shop. In addition, all used or reconditioned instruments must be clearly marked as such.
4. The term "measuring of hearing" used in North Dakota Century Code section 43-33-04, includes, but is not limited to mean, that such measure should be conducted in an environment which takes into account background noise levels and their effect upon the acquisition of valid threshold measurements. Testing should not be conducted in an environment which would render thresholds invalid.
5. The term "measuring of human hearing", as used in North Dakota Century Code section 43-33-04, includes, but is not limited to mean, the measurement of human hearing through the utilization of an audiometer and those procedures common to otological and audiological assessment of hearing acuity.
6. The term "sale" as used in North Dakota Century Code chapter 43-33 must be deemed made or completed when a purchase agreement or receipt is signed by the purchaser, total or partial payment is made, and the hearing instruments are ordered.
7. The term "week" means a period of forty hours.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-01

10-14-01-02. Terms and duties of officers. Officers elected by the board shall serve for a term of one year, or until a successor is elected and qualified. Board officers must be limited to serving two consecutive terms in an office. It is the duty of the chairman to preside at all board meetings. It is the duty of the secretary-treasurer to document all board business. In the absence of the chairman, a vice chairman must be appointed to preside at the meeting by general election.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-15

10-14-01-03. Filling vacancies. In the event of a vacancy, the unexpired terms of office for chairman and secretary-treasurer must be filled for the remainder of the unexpired term by general election by the board.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-15

10-14-01-04. Identification cards. Identification cards, signed by the office of attorney general, must be issued to all licensees and permittees and must be in possession at all times when in contact with the public.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-08

CHAPTER 10-14-02 EXAMINATIONS

Section	
10-14-02-01	Mailing Notice of Practicum Examination
10-14-02-02	Persons Eligible to Take Examination
10-14-02-03	Ethics on Examination
10-14-02-04	Written Submission of Complaints
10-14-02-05	Requirements for Licensure

10-14-02-01. Mailing notice of practicum examination. Notice of all practicum examinations must be sent to all persons holding temporary training permits at least forty-five days prior to the administration of the examination. To be eligible to participate in said examination, all applications for said examination must be received by the board at least thirty days prior to the examination date.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-07, 43-33-14

10-14-02-02. Persons eligible to take examination.

1. An individual may take the examination without first obtaining a temporary training permit.
2. To be eligible to take the examination, trainees under supervision are required to submit written verification of satisfactory completion of initial training requirements as outlined in North Dakota Century Code chapter 43-33.
3. An individual may take each section of the examination a maximum of three times. After the third time, the individual must wait at least one year and will be required to take a more comprehensive examination.
4. In addition to the above, a trainee under supervision is required to submit a log verifying that adequate supervision has been given as outlined in North Dakota Century Code section 43-33-08.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-07, 43-33-08

10-14-02-03. Ethics on examination. Passing on information regarding the examination content or procedures utilized, other than complaints presented to the board, is a breach of professional ethics.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-12, 43-33-14

10-14-02-04. Written submission of complaints. Each individual taking the examination must be informed that the individual has the right to submit in writing any complaint the individual may feel justifiable as a result of participating in the examination process, but said complaint must be filed with the attorney general within ten days of the examination. After being submitted to the office of attorney general, said complaint must be reviewed by the board. The board's decision as to appropriate action is final in regard to board consideration. If a complaint involved one of the members of the board, that member must be excused from the deliberation.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-12

10-14-02-05. Requirements for licensure.

1. Applicants may obtain a license by successfully passing a qualifying examination, provided the applicant is eighteen years of age or older, does not have an arrest or conviction record, and is of good moral character.
2. The examination must include, but not be limited to:
 - a. Tests of knowledge in the following areas as they pertain to the fitting of hearing instruments:
 - (1) Basic physics of sound.
 - (2) The anatomy and physiology of the ear.
 - (3) The function of hearing instruments.
 - (4) Hearing instrument evaluating and fitting process.
 - (5) Elementary audiology.
 - b. Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing instruments:
 - (1) Pure tone audiometry, including air conduction testing and bone conduction testing.
 - (2) Live voice or recorded voice speech audiometry, including speech reception threshold testing and most comfortable loudness measurements and measurements of tolerance thresholds.
 - (3) Masking when indicated.
 - (4) Recording, evaluation, and interpreting audiograms and speech audiometry to determine proper selection and adaption of a hearing instrument for air, bone, and speech audiometry.
 - (5) Otoscopic examination of the ear and taking earmold impressions.
 - (6) Selection and adaption of hearing instruments.
 - (7) Knowledge of calibration of equipment.
 - (8) Knowledge of article 10-14 and North Dakota Century Code chapter 43-33.
3. A minimum score of seventy is required on the written examination and seventy-five on the practicum examination. If a lower score is received on either part, the applicant must

be required to take all sections of that examination over again.

History: Effective July 1, 1990.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-06, 43-33-07

CHAPTER 10-14-03 SUPERVISION AND TRAINING

Section

10-14-03-01	Supervision of Trainees
10-14-03-02	Training Requirements
10-14-03-03	Responsibility of Supervisor
10-14-03-04	Forms to be Used

10-14-03-01. Supervision of trainees.

1. Supervisors of trainees must be competent professional workers who hold a valid North Dakota hearing aid dealers license. The supervision of the trainees must entail the personal direct involvement of the supervisor in any and all ways that will permit the supervisor to attest to the adequacy of the trainee's performance in the training experience.
2. Knowledge of the trainee's work may be obtained in a variety of ways, such as conferences, audio and video tape recordings, written reports, staffings, discussions with other persons who have participated in the training of the trainee, and must include direct observation of the trainee performing puretone air and bone conduction and speech audiometric evaluations, interpretation of audiograms, troubleshooting hearing instruments and sound-field testing of subjects, as well as taking case history information and performing such other activities considered important to the preparation for licensure.
3. A supervisor may have a maximum of three trainees concurrently.
4. All supervisor contacts with the trainee, including in-office or with the public, must be entered in the trainee logbook. The trainee may not make any sale of a hearing instrument without first consulting with the supervisor and obtaining the supervisor's approval and signature of such approval in the supervisor's logbook prior to such sale.
5. If a person who holds a temporary training permit has not successfully passed the licensing examination within the first year, a temporary training permit may be renewed or reissued

once upon payment of the required fees. At this time the trainee is required to be under direct supervision of the trainee's sponsor until such time as both parts of the examination have been successfully passed.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-07, 43-33-08

10-14-03-02. Training requirements. Training requirements are as set forth in North Dakota Century Code section 43-33-08. In addition, the board also strongly recommends completion of the basic home study course by the national institute of hearing instruments studies or its equivalent.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-08

10-14-03-03. Responsibility of supervisor.

1. Provide the day-to-day supervision of the trainee, including assigning a licensed supervisor for temporary absences.
2. Provide the trainee with materials and equipment necessary for appropriate audiometric and hearing instrument evaluation and fitting procedures.
3. Supplement the trainee's background information through reading lists and other references.
4. Conduct inservice training for trainees.
5. Act as consultant to the trainee, i.e.:
 - a. Provide time for conferences for the trainee.
 - b. Must be able to provide a variety of resource materials, approaches, and techniques which are based on sound theory, successful practice, or documented research.
6. Establish goals with the trainee which are realistic, easily understandable, and directed toward the successful completion of trainee requirements; and
 - a. Observe the trainee in all aspects of the hearing instrument fitting process.
 - b. Confer with the trainee following trainee's contact with client.

- c. Provide opportunity for the trainee to give feedback on the trainee's practicum experiences both during and after the practicum experience, either in writing or through conferences.
7. Assist and encourage the trainee to utilize supportive professional sources.
 8. Be aware of and adhere to state and federal laws relating to hearing instrument fitting and dispensing.
 9. Be aware of and assist the trainee in fulfilling licensing requirements of the state of North Dakota.
 10. Notify the attorney general and the board within ten days following termination of trainee supervision.

History: Effective July 1, 1990.
 General Authority: NDCC 43-33-14
 Law Implemented: NDCC 43-33-08

10-14-03-04. Forms to be used.

1. The board hereby adopts the following forms:
 - a. State board practicum examination score sheets (see appendix C of guidelines for evaluating candidates for the practical test of proficiency).
 - b. Case history and audiogram forms for practicum examination (two part).
 - c. Trainee log.
 - d. Supervisor's log.
2. Copies of these forms may be obtained by contacting the board secretary.

History: Effective July 1, 1990.
 General Authority: NDCC 43-33-14
 Law Implemented: NDCC 43-33-14

CHAPTER 10-14-04
 GENERAL REQUIREMENTS

Section	
10-14-04-01	General Requirements for Continuing Education
10-14-04-02	Notification of Business Name or Address Change
10-14-04-03	Guidelines for a Thirty-Day Trial Period

10-14-04-04 Disciplinary Grounds
10-14-04-05 Advertisements

10-14-04-01. General requirements for continuing education.

1. Each fitter and dealer licensed in this state is required to take two days of continuing education per year. Two days equal a total of ten hours.
2. The board may accept for continuing education credit courses approved and sponsored by the national hearing aid society, national institute of hearing instruments studies, and American speech-language hearing association.
3. Subject matter for continuing education credit courses must include a minimum of six hours hearing instrument related, two hours may be audiology, and two hours of other subjects related to the hearing instrument dispensing operation.
4. Licensees shall provide written proof of attendance and completion of approved courses for renewal of license.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-11

10-14-04-02. Notification of business name or address change. Licensees are required to notify the office of attorney general within ten days of when they change the name or address of their business, including notification of the forwarding address when leaving the state. The business address of licensees must be a permanent address within the state of North Dakota and not a post-office box.

History: Effective July 1, 1990.
General Authority: NDCC 43-33-14
Law Implemented: NDCC 43-33-10

10-14-04-03. Guidelines for a thirty-day trial period.

1. Any purchaser of a hearing instrument or instruments is entitled to a refund of the full purchase price advanced by the purchaser for such instrument or instruments (less a nominal usage charge as hereinafter described) upon the return by the purchaser to the licensee in good working order, normal wear and tear excepted, within the thirty-day period ending thirty days from the date of delivery of such instrument or instruments.
2. Prior to delivery to the purchaser by the licensee of any instrument or instruments, the per day usage charge to which

the licensee may be entitled upon the return of such instrument or instruments within the thirty-day period shall be fixed by written agreement. In the absence of such agreement, the licensee is entitled to no more than two dollars per day per instrument for each day the instrument or instruments may be held by the purchaser.

3. The purchaser is entitled, at no cost, to receive a copy of any written agreement as described in subsection 2, which agreement must include the name, address, and phone number of the dealer or fitter.
4. No refund is due the purchaser for charges attributable to earmolds, batteries, hearing tests, or hearing evaluations and other related procedures such as special modifications such as needed for Cros or Bi-Cros hearing instruments, or any other type of fittings and testing unless such fees exceed fifteen percent of all expenses incurred in the fitting process. Upon request, any fee by the dispenser over the fifteen percent must be returned to the purchaser of the complained of instrument.

History: Effective July 1, 1990.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-14

10-14-04-04. Disciplinary grounds. The attorney general may reprimand the licensee or permitholder or revoke, suspend, limit, or deny the trainee permit or license, or any combination thereof, of any person who has done any of the following:

1. Made any false statement or given any false information in connection with an application for a license or trainee permit or for renewal or reinstatement of a license or trainee permit.
2. Been issued a license or trainee permit through error.
3. Been adjudicated mentally incompetent by a court.
4. Been found guilty of or pled guilty to an offense the circumstances of which substantially relate to the practice of fitting and dealing in hearing instruments.
5. Violated this chapter or any federal or state statute or rule which relates to the practice of fitting and dealing in hearing instruments.
6. Practiced as a hearing instrument dealer or fitter while the person's ability to practice was impaired by alcohol or other drugs or physical or mental disability or disease.

7. Engaged in false, misleading, or deceptive advertising.
8. Made a substantial misrepresentation in the course of practice which was relied upon by a client or patient.
9. Failed to conduct a direct observation of the purchaser's ear canal.
10. Engaged in conduct which evidenced a lack of knowledge or ability to apply principles or skills of the practice of fitting and dealing in hearing instruments.
11. Engaged in unprofessional conduct. In this subsection, "unprofessional conduct" includes the violation of any standard of professional behavior which through experience, state statute, or administrative rule has become established in the practice of fitting and dealing in hearing instruments.
12. Obtained or attempted to obtain compensation by fraud, deceit, or coercion.
13. Violated any order of the examining board.
14. Knowingly employed directly or indirectly, to perform any work regulated under this chapter, any person not licensed or not holding a trainee permit under this chapter, or whose license or trainee permit as a hearing instrument dealer or fitter has been suspended or revoked.
15. Permitted another person to use his or her license or trainee permit.
16. Sold a hearing instrument to a person who was not given tests using appropriate procedures and instrumentation or without proper measurement of the functional intensity and range of the person's hearing.
17. Failure to properly supervise trainees.

History: Effective July 1, 1990.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-12, 43-33-13, 43-33-14

10-14-04-05. Advertisements. All advertisements for testing, dispersing, or selling hearing instruments must include at least the name of the dispenser present and the office address and phone number of that dispenser.

History: Effective July 1, 1990.

General Authority: NDCC 43-33-14

Law Implemented: NDCC 43-33-12, 43-33-14

TITLE 11

Audiology and Speech-Language Pathology,
Board of Examiners on

JUNE 1990

11-01-01-01. Organization of board of examiners of audiology and speech-language pathology.

1. History and function. The 1975 legislative assembly passed legislation to license audiologists and speech-language pathologists, codified as North Dakota Century Code chapter 43-37. In 1983 chapter 43-37 was revised. This chapter requires the governor to appoint a state board of examiners of audiology and speech-language pathology. It is the responsibility of the board to license audiologists and speech-language pathologists.
2. Board membership. The board consists of seven members appointed by the governor. Two members are audiologists, two members are speech-language pathologists, one member is a hearing aid dealer, one member is an otolaryngologist, and one is a consumer. Each board member serves a term of three years. No member may serve on the board more than two successive terms.
3. Officers. Officers are elected annually. The board may hire an executive secretary as necessary.
4. Inquiries. Inquiries regarding the board may be addressed to:

Board of Examiners of Audiology and
Speech-Language Pathology
North Dakota State Department of Health
and Consolidated Laboratories
Division of Legal Services
1200 Missouri Avenue
Bismarck, North Dakota 58501

or

Board of Examiners of Audiology and
Speech-Language Pathology
Bureau of Educational Services and
Applied Research
Box 8158, University Station
Grand Forks, ND 58202-8158

Phone: 701-777-4421
Fax: 701-777-3650

History: Amended effective May 1, 1984; June 1, 1990.
General Authority: NDCC 28-32-02.1
Law Implemented: NDCC 43-37-06

11-02-01-04. Licensure renewal. Licenses are renewable by January first of each year. They must be renewed on forms provided by the board. The renewal forms must be accompanied by the renewal fee and proof of meeting the continuing education requirements. ~~A person who fails to renew the person's license after two years of its expiration date may not renew it, and it may not be restored, reissued, or reinstated. Such persons may reapply for a new license if such persons meet the requirements of North Dakota Century Code chapter 43-37 and this article. If a person is unlicensed for a period of five years, the board may require that such person retake and pass the national teacher examinations specialty examination prior to licensure or relicensure. The board will allow a license to elapse only upon preapproval with a showing of unusual hardship conditions. An individual may be granted a second licensure only once in a five-year period. If a person is unlicensed for a period of five years from either holding a license or passing the examination, the board may require that such person retake and pass the examination prior to relicensure.~~

History: Amended effective May 1, 1984; October 1, 1989; June 1, 1990.
General Authority: NDCC 43-37-06
Law Implemented: NDCC 43-37-06

11-02-01-05. Fees. The following fees shall be paid in connection with audiologist and speech-language pathologist applications, examinations, renewals, and penalties:

1. Application fee for an audiologist license: ~~fifty~~ seventy-five dollars.
2. Application fee for a speech-language pathologist license: ~~fifty~~ seventy-five dollars.
3. Renewal fee for an audiologist license: ~~fifteen~~ thirty dollars.

4. Renewal fee for a speech-language pathologist license: fifteen thirty dollars.
5. ~~Late renewal penalty fee per month: five dollars.~~
6. ~~When a person applies for both audiology and speech language pathology licenses in the same calendar year, the total application fee is fifty dollars. A license expires on January first of the calendar year. If a person fails to renew the person's license before January first, a twenty-five dollar penalty fee will be incurred up to March thirty-first of that same year. After March thirty-first, the person will be considered by the board to be practicing without a license.~~

History: Amended effective May 1, 1984; June 1, 1990.

General Authority: NDCC 43-37-06

Law Implemented: NDCC 43-37-06

11-02-01-06. Continuing education. To renew a license a person must present proof of having attended at least six ten clock hours of continuing education approved by the board.

Continuing education for licensure renewal must be completed in the calendar year prior to the year for which licensure is sought. ~~Under extraordinary circumstances the board may consider a request for continuing education hours accrued in the same calendar year.~~

~~Such continuing education courses must be related to or increase the professional competence of the attendee. This determination will be made by the board through approval of requested courses. Continuing education is defined as courses or workshops that are (1) designed to increase the competence of the licensee in the area of licensure; (2) open to the public; and (3) preapproved by the board.~~

~~If any licensee allows their the licensee's license to lapse for a period of more than one year, the that licensee is must be required to submit proof of attendance of at least six ten clock hours of continuing education for each year that the license has lapsed up to a total of eighteen forty clock hours of continuing education hours.~~

Continued practice in violation of the continuing education requirements as outlined in this section ~~may subject subjects~~ a licensee to disciplinary action as outlined in North Dakota Century Code section 43-37-13.

History: Amended effective May 1, 1984; August 1, 1986; June 1, 1990.

General Authority: NDCC 43-37-06

Law Implemented: NDCC 43-37-06

11-02-01-07. Passing score. The successful completion of a national ~~examination~~ teacher examinations (NTE) specialty examination in

audiology or speech-language pathology means: obtaining a score equal to or greater than the passing score established by the American speech-language-hearing association and in effect at the time of administration of the test.

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

General Authority: NDCC 43-37-09

Law Implemented: NDCC 43-37-06

11-02-03-02. Complaint procedures. The board will respond only to complaints submitted in writing.

History: Effective June 1, 1990.

General Authority: NDCC 43-37-06

Law Implemented: NDCC 28-32-05

TITLE 30
Game and Fish Department

JUNE 1990

30-05-03-16. McGregor Dam. Boats powered by motors of more than ten horsepower are prohibited on the waters of McGregor Dam in Williams County. Repealed effective June 1, 1990.

History: ~~Effective August 1, 1980.~~
General Authority: ~~NBGG 20.1-13-12~~
Law Implemented: ~~NBGG 20.1-13-12~~

30-05-03-18. Epping-Springbrook Dam. Boats powered by motors of more than ten horsepower are prohibited on the waters of Epping-Springbrook Dam in Williams County. Repealed effective June 1, 1990.

History: ~~Effective October 1, 1983.~~
General Authority: ~~NBGG 20.1-13-12~~
Law Implemented: ~~NBGG 20.1-13-12~~

TITLE 32
Cosmetology, Board of

JULY 1990

32-01-02-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-11, except:

1. "Cosmetology establishment" includes businesses, premises, and schools required to have a certificate of registration from the North Dakota board of cosmetology pursuant to North Dakota Century Code chapter 43-11.
2. "~~Cosmetology salon~~" means the same as cosmetology shop as defined in subsection ~~4~~ of North Dakota Century Code section ~~43-11-01~~.
- ~~3.~~ "Cosmetology school" means any school teaching any or all of the practices of cosmetology.
- ~~4.~~ 3. "Good repair" means that an item is soil free with no holes, frayed wires, or tears in covering and fully operational for the purpose intended.
4. "Occupation of cosmetologist" includes the practice of esthetics and manicuring as defined in North Dakota Century Code section 43-11-01.
5. "Sanitized" means rendered free of dust, foreign material, and agents of disease or infestation through use of effective cleaning and disinfecting processes.
6. "Sanitizer" means a container holding a sanitizing agent which is large and deep enough to completely submerge the tools and implements to be disinfected.

History: Amended effective July 1, 1988; July 1, 1990.
General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-01, 43-11-11, 43-11-27.1

32-01-03-01. Comply with laws. All cosmetology salons and schools and all operators, manager-operators, estheticians, manicurists, instructors, student instructors, students, and demonstrators shall comply with the rules contained in this title and all applicable federal, state, and local laws, ordinances, rules, regulations, and codes.

History: Amended effective July 1, 1990.

General Authority: NDCC 43-11-05, 43-11-35

Law Implemented: NDCC 43-11-11, 43-11-11.1, 43-11-12, 43-11-13, 43-11-14, 43-11-15, 43-11-16, 43-11-17, 43-11-18, 43-11-19, 43-11-20, 43-11-20.1, 43-11-20.2, 43-11-20.3, 43-11-20.4, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-26, 43-11-27, 43-11-27.1, 43-11-28, 43-11-29, 43-11-30, 43-11-31, 43-11-32, 43-11-33, 43-11-34, 43-11-35, ~~43-11-36~~

32-01-03-04. Board to determine qualifications of applicant. The sufficiency of the qualifications of all applicants for admission to board examinations of all students and student instructors or for registration or licensing of students, student instructors, instructors, demonstrators, operators, and manager-operators, estheticians, and manicurists shall be determined by the board. The board may delegate such authority to the secretary of the board, and anyone feeling aggrieved by the board secretary's decision may in writing request a hearing before the board on the matter. The board hearing shall be conducted pursuant to the provisions of North Dakota Century Code chapters 43-11 and 28-32.

History: Amended effective July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15, 43-11-16, 43-11-19, 43-11-21, 43-11-22, 43-11-24, 43-11-25, 43-11-26, 43-11-27, 43-11-28, 43-11-29, 43-11-30, 43-11-31, 43-11-32, 43-11-35

32-02-01-02. Space dimensions and requirements.

1. Cosmetology salon. To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology salon shall have a minimum workspace of one hundred fifty square feet [13.94 square meters] for a cosmetology salon operated by a licensed manager-operator. In addition to such workspace, the cosmetology salon shall have a reception room, supply room, toilet facilities, facilities to maintain sanitary conditions, and hallways. There shall be a minimum of an additional thirty square feet [2.79 square meters] for each additional operator or manager-operator in the salon.

- a. Separate entrance. Each cosmetology salon shall have a separate public entrance and exit approved by the board.
 - b. Cosmetology salon separate. Each cosmetology salon shall be separated from living quarters and any other business by a solid, nontransparent wall from floor to ceiling containing no openings or doors.
 - c. Resident salons. Each cosmetology salon in a residential building shall maintain an entrance separate from the entrance to living quarters and remaining space, and entrances through garages or any other rooms are not permitted. There shall be a solid wall with no openings or doors between the salon and living quarters and remaining space.
 - d. Mobile home salons. Mobile homes, motor homes, trailers, or any type of recreational vehicles containing a cosmetology salon shall be permanently set on a foundation. Each cosmetology salon in such mobile home, motor home, trailer, or any type of recreational vehicle shall maintain an entrance separate from the living quarters and remaining space, and there shall be a solid wall with no openings or doors between the salon and living quarters and remaining space.
2. Cosmetology schools. To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology school shall have a minimum ~~space~~ of three thousand square feet [278.71 square meters] of floor space, ~~and such floor space shall include a business office, reception room, clinic laboratory, practice room, dispensary, student lounge, two lavatories, hallways, and classrooms for teaching a minimum of forty students plus an additional thirty-five square feet [3.25 square meters] for each student enrolled in the cosmetology course and an additional thirty-five square feet [3.25 square meters] per student enrolled in either the manicurist or esthetician course. Such floor space must include a business office, reception room, clinic laboratory practice room, dispensary, student lounge, two lavatories, hallways, and classrooms for training a minimum of forty students. In addition, for the manicurist and esthetician courses, floor space must include separate classrooms with adequate space to teach students enrolled. An additional thirty square feet [2.79 square meters] of floor space per student shall be required for each student enrolled over the original forty students.~~
- a. Separate entrance. Each cosmetology school shall have a separate public entrance and exit approved by the board.
 - b. ~~Cosmetologist~~ Cosmetology school separate. Each ~~cosmetologist~~ cosmetology school shall be separated from

living quarters and any other business by a solid nontransparent wall from floor to ceiling containing no openings or doors.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-04. Sanitary premises.

1. Walls, floors, and fixtures must be kept clean and in good repair at all times.
2. All floors must be kept clean and free of hair and other debris at all times and must be in good repair. Carpeting is not permitted in the working area. Carpeting will only be permitted in the reception and, drying areas, facial treatment, and manicuring area only.
3. Windows and mirrors should be clean.
4. Shampoo bowls must be free from all hair, and implements, must be free from all hair and debris and cleansed immediately after each use.
5. The dispensing area must be neat and clean. The supply area may not be accessible to the public.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-05. Water supply and waste disposal. Each cosmetology establishment shall be equipped with an adequate supply of hot and cold running water and proper plumbing. Each salon and school shall:

1. Have a safe water supply, approved by the local health authority or the state department of health and consolidated laboratories.
2. Dispose of sewage and other liquid wastes in a sanitary manner, approved by the local health authority or the state department of health and consolidated laboratories.
3. Store and collect solid waste so as to avoid health hazards, rodent harborages, insect breeding areas, and accidents.
4. Have solid wastes collected at least once each week, and an adequate number of approved covered containers shall be provided for storage of solid waste pending collection.

5. Comply with the state and local plumbing codes.

All plumbing in every cosmetology establishment shall comply with the state and local plumbing code.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-06. Personal hygiene. Every operator, manager-operator, manicurist, esthetician, instructor, and student, while on the cosmetology establishment premises, shall be neat and clean in person and in attire, and free from any infectious or communicable disease.

1. Attire. ~~All employees of a salon~~ Every operator, manager-operator, manicurist, esthetician, instructor, student instructor, and student must be neat and clean in person and attire, and shall wear clean washable professional attire.
2. Hands. Every operator, manager-operator, manicurist, esthetician, instructor, student instructor, and student shall wash one's hands with soap and water immediately before serving each client.
3. Carrying combs. Combs or other instruments shall not be carried in uniform clothing pockets.
4. Contagious diseases. No operator, manager-operator, manicurist, esthetician, instructor, student instructor, or student who has an infectious or contagious disease shall knowingly serve the public in a cosmetology establishment while such a disease is in a communicable stage. (Common colds and flu are two common examples of contagious diseases.)
5. Smoking. No operator, manager-operator, manicurist, esthetician, instructor, student instructor, or student shall smoke while actively engaged in serving the public.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-11. Particular aspects of disinfecting.

1. Germicides. In disinfecting tools, instruments, and implements, any department of health and consolidated laboratories-approved germicide prepared specifically for germicidal treatment of tools, instruments, and implements shall be used in accordance with the directions of the manufacturer. All germicidal solutions shall be fresh, clean, and free from contaminants.

2. Fluids, creams, and powders. All fluids, semifluids, creams, and powders shall be kept in a clean, covered container at all times and shall be dispensed with a clean sanitized spatula or from a shaker, dispenser pump, or spray-type container. Spatulas made of a washable, nonabsorbent material may be sanitized and used again, and spatulas made of wood shall be discarded after use. Fluids, semifluids, creams, and powders shall be applied only by sanitary, disposable applicators, and the applicators shall be discarded after use.
3. Tools and instruments. All permanent wave equipment, clips, rollers, pins, shampoo and comb-out capes, nets, as well as all other tools, instruments, and implements shall be kept in a clean, sanitized condition at all times. Neck strips shall be used in lieu of a clean towel whenever applicable in order to prevent such materials from coming in contact with the skin or hair of each client. Such neck strips shall not be used more than once, and all other reusable items shall be washed, sanitized, and disinfected before use on each client.
4. Containers. All bottles and containers shall be correctly and distinctly labeled to disclose their contents, and all bottles and containers containing poisonous substances shall be so designated.
5. Waste container. Each work station in a cosmetology establishment shall be provided with a covered waste container which shall be emptied and washed daily. All chemical waste material must be deposited immediately in a closed fire-retardant container and frequently disposed of in a sanitary manner.
6. Protective coverings. All protective coverings used on a client shall be kept clean and in good condition, and such protective coverings shall be stored in a closed cabinet when not in use.
7. Wet and dry sanitizers. Each cosmetology establishment shall have wet and dry sanitizers of sufficient size and quantity to sanitize all tools, instruments, and implements of the establishment, and such sanitizers shall be readily accessible. Such sanitizers shall contain a commercial sanitizing agent approved by the department of health and consolidated laboratories and the board, and such sanitizing agent shall be used according to the manufacturers' directions.
8. Metal instruments. All metal tools, instruments, and implements shall be sanitized with a seventy percent ~~ethyl alcohol~~ or a ~~ninety-five percent~~ isopropyl alcohol solution after each use and stored in a dry sanitizer until the next use. A small amount of oil may be added to the alcohol solution when used to sanitize metal instruments.

9. Storage of supplies. Every cosmetology establishment shall have a separate cabinet or storage area for the storage of supplies, and any supplies containing any caustic or other material harmful to humans shall be stored in a place not readily accessible to clients or the public.
10. Combs and brushes. Each operator, manager-operator, instructor, and student shall have a minimum of twelve professional combs and twelve professional brushes. All shall be in good usable condition.
11. Electric tools and outlets. All electric tools, instruments, and implements, including but not limited to blowers and irons, shall be kept in proper stands or holders when not in use, and each cosmetology establishment shall have a sufficient number of electrical outlets so that no cord or electrical connection constitutes a hazard, fire or otherwise, to the public or persons employed or learning in the establishment.
12. ~~Brush rollers and neck~~ Neck brushes. No salon or school may use ~~brush rollers of any kind or~~ neck brushes.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-03-01-02. Floor plan. Every application for a certificate of registration shall be accompanied by a detailed floor plan of the proposed salon premises drawn to scale. The floor plan shall show entrances, exits, electrical outlets, water and sewer facilities, air-conditioning, exhaust fans, locations of equipment, reception room, supply room, toilet facilities, hallways, and facilities to maintain sanitary conditions. Letters of compliance from local authorities governing plumbing, electrical, and building codes are required prior to final inspection. A revised floor plan shall be filed with the board in the event of any change of location or major changes in the salon premises.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-11

32-03-01-06. Changes in operators or manager-operators. Every cosmetology salon shall notify the board in writing of any change ~~in~~ its ~~operators or~~ manager-operators prior to such change whenever possible but not more than five days after such change.

1. Name, address, and certificate number. The written notification provided to the board by the salon shall contain

the name, current home address, and certificate number of each operator ~~or~~ and manager-operator employed or terminated.

2. **Current staff.** Each cosmetology salon shall be responsible to keep the board informed by written notice of the current operators and manager-operators employed.
3. **Manager-operator.** Each cosmetology salon shall notify the board in writing the name, home address, and certificate number of the manager-operator responsible for the operation, management, and conduct of the salon. Any changes in the manager-operator responsible shall be reported to the board in writing pursuant to the provisions of this section.

History: Amended effective July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-14, 43-11-15, 43-11-28

32-04-01-01. **School applications.** All persons, firms, associations, partnerships, corporations, and other entities desiring to operate a cosmetology school shall make application to the board for a certificate not less than three months prior to commencing business. The application shall be made on a form provided by the board and shall be accompanied by the fee of five hundred dollars. All renewal applications of cosmetology schools shall be made to the board before December ~~first~~ thirty-first first in each year. Renewal applications shall be accompanied by the fee of two hundred dollars. Six weeks prior to any change of ownership, name, location, or address, a cosmetology school shall apply for reregistration with the board, and the same information, documents, bond, and registration fee required of new applicants shall be submitted to the board.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-16, 43-11-17

32-04-01-06. **Student registration.** Each cosmetology school shall register students taking a complete course of study before the tenth day of each month.

1. **Student contract.** Each cosmetology school shall provide the board with a true copy of the student contract for each student and student instructor enrolled. The student contract shall contain the entire contract between the parties, including a complete list of tools, books, and supplies provided to the student or student instructor. Such student contract shall be provided to the board by the tenth day of the month when each student and student instructor is enrolled.

2. Registration. Each cosmetology school shall furnish the board for each student and student instructor enrolled with the completed registration and education forms provided by the board. The registration and education forms shall be accompanied by a copy of the birth certificate for each such student and student instructor state board notice of registration form accompanied by a copy of the student's birth certificate and high school diploma or official transcript signed by school or general educational development. All such materials shall be provided to the board by the tenth of the month when each student and student instructor is enrolled.
3. Credit before approval. No student or student instructor shall be given credit for any time prior to the receipt and approval of the student's or student instructor's registration by the board.
4. Reregistration. Upon reregistration for any reason, the provisions of this section shall be complied with where applicable.

History: Amended effective July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-19

32-04-01-13. Equipment and library. Each cosmetology school shall have the following minimum equipment and library:

1. Minimum Cosmetology minimum equipment:

First 25 students	26-50	51-75	76-100
1-Chart of anatomy			
a. Bones			
b. Muscles			
c. Nerves			
d. Circulatory system			
e. Skin			
1-Blackboard four feet by six feet [1.22 meters by 1.83 meters] for each theory room			
2-Master dry sterilizers or electric sterilizers			
2-Large wet sterilizers	3	4	6
4-Shampoo basins	6	8	10
6-Facial chairs	8	10	12
12-Hair dryers	15	25	30
6-Manicure tables	8	10	10
12-Work stations with mirrors	25	35	45
1-Therapeutic lamp two-colored bulbs			

300-Cold wave rods and other cold wave supplies			
6-Waste containers	10	14	20
1-Full length mirror			
2-Soiled towel containers	4	8	10
2-Towel cabinets			
2-Supply cabinets			
1-Bulletin board - conspicuously located			
Solution dispensers adequate for enrollment			
Fireproof cabinet for school and student records			
Adequate supply of facial supplies			

2. Esthetician minimum equipment:

- a. Sufficient chalkboards.
- b. One lavatory bowl for enrollment for up to fifteen students.
- c. One work station or position per two students, must include a facial chair or cushioned massage table.
- d. One set of facial equipment per two work stations or positions to include manual, mechanical, or electrical apparatus (at least one of the following): electrical heating mask, steamer, brushing, vacuum ionization, glass electrode or high frequency galvanic or cathodic current (prohibited faradic) decrustation machine, spray or mister, one magnification lamp.
- e. Sufficient trays for facial supplies.
- f. One dry sterilizer per each work station.
- g. One properly lighted makeup area.
- h. One head form or chart per class.
- i. Audiovisual aids.

3. Manicurist minimum equipment:

- a. Sufficient chalkboards.
- b. A minimum of one handwashing sink separate from restrooms for enrollment up to fifteen, and one additional sink for each fifteen students or fraction thereof.
- c. Advanced department will have adequate chairs for clients, also adequate ventilation for work areas.

- d. One work space with adequate light must be provided for every student.
 - e. Sufficient trays for manicuring supplies.
 - f. One set of mannequin hands per student.
 - g. Manicuring kit for each student containing proper implements for manicuring and pedicuring.
 - h. Implements for artificial nails, nail wraps, and tipping.
 - i. One pedicure setup station.
 - j. Audiovisual aids.
4. Minimum school library:
- a. Standard dictionary.
 - b. Dictionary of medical words.
 - c. Standard textbook.
 - d. References on iron curling.
 - e. References on hair straightening.
 - f. References on hair coloring.
 - g. Copy of cosmetology law.
 - h. Copy of sanitary rules and regulations.
 - i. Copy of minimum prices.
 - j. Trade magazines.
 - k. Slides and films pertaining to cosmetology.

History: Amended effective July 1, 1990.

General Authority: NDCC 43-11-05

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

32-04-01-14. Tools and supplies. The cosmetology school shall provide each student with the tools and supplies listed in the student contract.

1. Mannequin. Each cosmetology school shall furnish each cosmetology student with a mannequin.

2. Removing tools and supplies. Registered students shall not remove any tools, supplies, or equipment from the school premises without permission of the school management.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

32-04-01-18. Curriculum. Each cosmetology school shall teach branches and areas of cosmetology, which shall include theory and practice in subjects required, provided, and approved by the board.

1. Hours. The course of instruction shall consist of one thousand eight hundred hours over a period of twelve months for cosmetology, nine hundred hours for esthetics, and three hundred fifty hours for manicuring.
2. Theory classes. Each cosmetology school shall conduct theory classes during the first hour of each day of the week for a minimum of four days per week.
3. Student credit hour and credit record. The requirements set forth in the student hour and credit record provided by the board shall be completed within a twelve-month period unless the student has excused absences approved by the board for cosmetology students enrolled in a forty-hour week course or within a twenty-month period for students enrolled in a twenty-four-hour week course. Esthetics students enrolled in a forty-hour week course must be completed in seven months, or a twenty-four-hour week course in eleven months. Manicurist students enrolled in a forty-hour week course must be completed in a three-month period, or a twenty-four-hour week course completed in a five-month period. Each cosmetology school shall keep the student hour and credit record current for each student, and the record shall be current by the fifth of each month the student is enrolled. Within five days of a student's completion of the course, transfer, or discontinuance school's knowledge that a student has either completed the course, transferred, or discontinued and fulfilled all school requirements according, the school shall furnish the board with the record.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-22

32-04-01-25. Examinations.

1. School examinations. Each student must have successfully passed thirty-six eighty percent of the weekly examinations and secured a seventy-five percent average in the cosmetology

school final examination in both written and practical work before making application to take the board examination. The marks obtained in the school examination shall be retained by the school until the student has successfully passed the board examination.

2. Board examinations. The time, place, and date of board examinations shall be set by the board, and there shall be a minimum of four board examinations per year.
3. Failing applicant. Applicants who fail any portion of the examination shall reregister and pay the required fee before being permitted to retake the portion of the examination they have failed.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-22, 43-11-23

32-04-01-27. Esthetician course curriculum. The curriculum for students enrolled in an esthetician course for a complete course of nine hundred hours at forty hours per week in at least seven months or twenty-four hours per week in eleven months, training must be as follows: No school or licensed instructor may permit a student to render clinical services until a student has completed twenty percent of the total hours of instruction required. These hours are to include the following:

<u>Sterilization, sanitation, and safety</u>	<u>115 hours</u>
<u>Body treatment, facials, hair removal, and makeup</u>	<u>505 hours</u>
<u>Study of law, ethics, management, and salesmanship</u>	<u>115 hours</u>
<u>Related subjects</u>	<u>90 hours</u>
<u>Unassigned</u>	<u>75 hours</u>
<u>Total minimum hours</u>	<u>900 hours</u>

History: Effective July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

32-04-01-28. Manicurist course curriculum. The curriculum for students enrolled in a manicurist course for a complete course of three hundred fifty hours at forty hours per week in at least three months or twenty-four hours per week in at least five months, training must be as follows: No school or licensed instructor may permit a student to render clinical services until a student has completed twenty percent of the total hours of instruction required. These hours are to include the following:

<u>Sterilization, sanitation, and safety</u>	<u>45 hours</u>
<u>Manicuring, pedicuring, and application of artificial nails</u>	<u>200 hours</u>

<u>Study of law, management, ethics, and salesmanship</u>	<u>45 hours</u>
<u>Related subjects</u>	<u>35 hours</u>
<u>Unassigned</u>	<u>25 hours</u>
<u>Total minimum hours</u>	<u>350 hours</u>

History: Effective July 1, 1990.
 General Authority: NDCC 43-11-05
 Law Implemented: NDCC 43-11-16

32-04-01-29. Curriculum for esthetician instructor training.

1. Persons receiving esthetician instructor training in a cosmetology school shall spend all of their training time under the direct supervision of a licensed instructor and may not be left in charge of students or schools at any time without the direct supervision of a licensed instructor.
2. Persons receiving instructor training are not permitted to perform clinical services on a client for compensation, either by appointment or otherwise. Persons receiving instructor training must be furnished a teacher's training manual.
3. The curriculum in a cosmetology school, for an esthetics instructor training course, must include at least seven months and nine hundred hours at forty hours per week or eleven months at twenty-four hours per week:
 - a. The teacher - 100 hours:
 - (1) Personality.
 - (2) Technical knowledge.
 - (3) Teacher's characteristics.
 - (4) Teachers as professionals.
 - b. Preparations for teaching:
 - (1) Planning the course.
 - (2) Preparing lesson plans:
 - (a) Objectives.
 - (b) Outline.
 - (3) Student activities.
 - (4) Steps of teaching:
 - (a) Preparation.

(b) Presentation.

(c) Application.

(d) Testing.

c. Student motivation and learning - 100 hours:

(1) State board of cosmetology requirements and recordkeeping.

(2) Student motivation.

(3) Student participation.

(4) Student personalities.

(5) Individual:

(a) Slow learner.

(b) Gifted learners.

d. Methods, management, and materials - 250 hours:

(1) Methods, procedures, and techniques of teaching:

(a) Lectures and discussions.

(b) Demonstrations.

(c) Conducting practice activities.

(d) Questioning techniques.

(e) Results.

(f) Special situations.

(2) Classroom management:

(a) Physical environment.

(b) Administrative duties.

(c) Student discipline.

(d) Class supervision.

(e) Classroom routine.

(f) Corrective measures.

(3) Teaching materials:

- (a) Audiovisual aids (types).
- (b) Values of different teaching aids.
- (c) Correct usage.
- (d) Miscellaneous teaching materials.
 - [1] Textbooks.
 - [2] Workbooks.
 - [3] Reference books.
 - [4] Creative aids.

e. Testing and evaluations - 150 hours:

(1) Testing:

- (a) Purpose.
- (b) Performance tests.
- (c) Written tests.
- (d) Standardized tests.

(2) Evaluation:

- (a) General student abilities.
- (b) Student achievement.
- (c) Teacher evaluation.

f. Education (vocabulary development) - 200 hours.

g. Unassigned - 100 hours.

Total hours - 900.

History: Effective July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

32-04-01-30. Curriculum for nail care instructor training.

1. Persons receiving nail care instructor training in a cosmetology school shall spend all of their training time

under the direct supervision of a licensed instructor and may not be left in charge of students or school at any time without the direct supervision of a licensed instructor.

2. Persons receiving nail care instructor training are not permitted to perform clinical services on a client for compensation, either by appointment or otherwise. Persons receiving instructor training must be furnished a teacher's training manual.

3. The curriculum in a cosmetology school for a nail care instructor training course must include at least three hundred fifty hours to be completed in three months at forty hours a week or in five months at twenty-four hours per week as follows:

a. Lesson planning and presentations - 50 hours.

b. Testing - 25 hours.

c. Education - 25 hours (vocabulary development).

d. Demonstration and lecturing - 50 hours.

e. Teaching aids - 15 hours.

f. Classroom management - 25 hours.

g. Rules and law - 10 hours.

h. Basic teaching methods - 50 hours.

i. Teaching principles - 70 hours.

j. Personality and teaching - 20 hours.

k. Unassigned - 10 hours.

Total hours - 350 hours.

History: Effective July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

32-05-01-01. Operators. Every person desiring to be licensed by the board as an operator shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to operators and shall make application to the board for a certificate prior to commencing any activity as an operator.

1. **Fee and proof.** The application shall be accompanied by the required proof of qualification applicable to the applicant and the examination fee of twenty dollars.
2. **Renewal.** Every operator shall renew the operator's certificate by annually making written application to the board before December thirty-first each year, and such renewal application shall be accompanied by the ten dollar fee.
3. **Penalty fee.** If the licensee fails to renew the ~~licensee's~~ operator's license following the expiration date, a penalty fee of ten dollars is required.
4. **Change of name or address.** Every operator shall notify the board in writing of any change of name or change of residence within thirty days after the change. In the event of a change of name, the notice shall state the full name before the change and the full name after the change together with the current address and certificate number. In the event of a change of residence address, the notice shall state the full name, the new residence, address, and the certificate number.
5. **Certificates displayed.** Every operator shall conspicuously display the operator's certificate of registration in the ~~booth~~ reception or work area of the cosmetology salon.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-28

32-05-01-02. **Manager-operators.** Every person desiring to be licensed by the board as a manager-operator shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to manager-operators and shall make written application to the board to register for the manager-operator's examination.

1. **Fee and proof.** The application shall be accompanied by the fee of forty dollars and the required proof of qualification.
2. **Renewal.** Every manager-operator shall renew the manager-operator's certificate by annually making an application to the board before December thirty-first each year, and the renewal application shall be accompanied by the fifteen dollar fee.
3. **Penalty fee.** If the licensee fails to renew the ~~licensee's~~ manager-operator's license following the expiration date, a penalty fee of ten dollars is required.
4. **Change of name or address.** Every manager-operator shall notify the board in writing of any change of name or change of

residence address within thirty days after the change. In the event of a change of name, the notice shall state the full name before the change and the full name after the change together with the current address and certificate number. In the event of a change of residence address, the notice shall state the full name, the new residence address, and the certificate number.

5. Certificates displayed. Every manager-operator shall conspicuously display the manager-operator's certificate of registration in the ~~booth~~ reception or work area of the cosmetology salon.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-26, 43-11-28

32-05-01-03. Instructors. Every person desiring to be an instructor shall have the qualifications and passed the examination required by North Dakota Century Code chapter 43-11 applicable to student instructors and instructors and shall make application in writing to the board pursuant to North Dakota Century Code section 43-11-27 and this section.

1. Renewal. Every instructor shall renew the instructor's certificate by annually making written application to the board before December thirty-first each year, and the renewal application shall be accompanied by the fifteen dollar fee and evidence of attendance at a board-approved seminar during the previous year.
2. Penalty fee. If the licensee fails to renew the ~~licensee's~~ instructor's license following the expiration date, a penalty fee of ten dollars is required.
3. Seminars. Every instructor shall attend a board-approved seminar annually. Before attending any seminar, every instructor shall apply in writing to the board for approval of the seminar.
4. Change of name or address. Every instructor shall notify the board in writing of any change of name or change of residence address within thirty days after the change. In the event of a change of name, the notice shall state the full name before the change and the full name after the change together with the current address and certificate number. In the event of a change of residence address, the notice shall state the full name, the new residence address, and the certificate number.

5. Certificate displayed. Every instructor shall conspicuously display the instructor's certificate of registration in the clinic laboratory area of the cosmetology school.

History: Amended effective July 1, 1988; July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23, 43-11-27, 43-11-28

32-05-01-06. Esthetician. Every person desiring to be licensed by the board as an esthetician shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to estheticians and shall make written application to the board to register for the esthetician's examination:

1. Fee and proof. The application must be by the required proof of qualification applicable to the applicant and the examination fee of twenty dollars.
2. Renewal. Every esthetician shall renew the esthetician's certificate by annually making written application to the board office before December thirty-first each year, and such renewal application must be accompanied by the fifteen dollar fee.
3. Penalty fee. If the licensee fails to renew the esthetician's license following the expiration date, a penalty fee of ten dollars is required.
4. Change of name or address. Every esthetician shall notify the board in writing of any change of name or residence within thirty days after the change. In the event of a change of name, the notice must state the full name before the change and the full name after the change together with the address and certificate number. In the event of a change of residence address, the notice must state the full name, the new residence address, and the certificate number.
5. Certificates displayed. Every esthetician shall conspicuously display the esthetician's certificate of registration in the reception or work area of the cosmetology salon.

History: Effective July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-27.1, 43-11-28

32-05-01-07. Manicurist. Every person desiring to be licensed by the board as a manicurist shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to manicurists and

shall make written application to the board to register for the manicurist's examination.

1. Fee and proof. The application must be accompanied by the required proof of qualification applicable to the applicant and the examination fee of twenty dollars.
2. Renewal. Every manicurist shall renew the manicurist's certificate by annually making written application to the board before December thirty-first each year, and such renewal application must be accompanied by the fifteen dollar fee.
3. Penalty fee. If the licensee fails to renew the manicurist's license following the expiration date, a penalty of ten dollars is required.
4. Change of name or address. Every manicurist shall notify the board in writing of any change of name or any change of residence within thirty days after the change. In the event of a change of name, the notice must state the full name before the change and the full name after the change together with the current address and certificate number. In the event of a change of residence address, the notice must state the full name, the new residence address, and the certificate number.
5. Certificates displayed. Every manicurist shall conspicuously display the manicurist's certificate of registration in the reception or work area of the cosmetology salon.

History: Effective July 1, 1990.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-27, 43-11-27.1, 43-11-28

TITLE 43
Industrial Commission

MAY 1990

43-02-03-14.1. Certification of welders.

1. For the purposes of this section, "wellhead" means any equipment attached to the top of the tubular goods used in a well to support the tubular strings, provide seals between strings, and control production from the well.
2. Any welding on a wellhead must be done by a certified welder verified in accordance with this section.
3. Any certified welder requesting verification of the welder's certification shall submit sufficient documentation to the enforcement officer to verify test results and testing procedures for a welder qualification test. All test welds must be prepared, welded, and tested in accordance with the requirements of section IX of the American society of mechanical engineers (ASME) code or American petroleum institute 1104 code. Tests on the welded specimen must be made by a certified testing laboratory. Any company qualification test procedure conforming to these codes can be used. Position six-G from section IX of the American society of mechanical engineers code must be used on all tests.
4. Upon verification by the enforcement officer, the welder will be furnished a form to be presented to any operator requesting work. The form will contain the welder's name, address, verification number, and expiration date. The verification will expire twelve months from the date of issuance. Thereafter, the welder must be recertified and the process for verification repeated pursuant to this section.
5. It is the responsibility of the operator and owner of the wellhead to ensure that any welding done on the wellhead is done by a welder whose certification is verified in accordance

with this section. The operator must promptly submit to the enforcement officer a form 4 sundry notice of any welding done on any wellhead, listing the welder's name and verification number and giving a brief description of the work.

6. All persons requesting welder verification or reverification shall pay a twenty-five dollar fee.

History: Effective May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-22

43-02-03-15. Bond. Prior to commencing drilling operations, any person who proposes to drill for oil or gas shall submit to the commission, and obtain its approval, a surety bond or a property or cash bond in a form approved by the commission, conditioned as provided by law. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The bond shall be in the amount of fifteen thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approval is obtained by the enforcement officer. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a blanket bond conditioned as provided above. A blanket bond covering ten wells or less shall be in the amount of fifty thousand dollars. A blanket bond covering all wells, which a person may at any time drill or operate within the state before the bond is released, shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to ten dry holes that have not been properly plugged and the sites restored. With regard to cash bonds, the commission may require higher amounts than those referred to in this section. Such additional amounts for cash bonds must be related to the expected cost of plugging, as determined by the commission.

The bond herein required shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging when the well is dry or abandoned, even though the well may have been a producer. Approved plugging shall also include practical restoration of the well site, and appurtenances thereto. Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering a well or wells, such as producers, not ready for plugging, the principal should proceed as follows:

The holder of the approved permit to drill, the principal on the bond, shall notify the commission in writing on a form to be provided by the commission reciting that a certain well, if it be only one well, or all wells, if there are several wells, describing each well by its location within the section, township, and range, has or have been transferred to a certain transferee, naming such transferee, for the purpose of

ownership or operation. Such transfer must be dated and signed by a party duly authorized so to sign.

Beneath On said transfer form the transferee ~~should~~ shall recite ~~that~~ the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under this the transferee's one-well bond ~~tendered with corporate surety or such wells~~, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized so to sign.

When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor is immediately released of the plugging responsibility of the well or wells as the case may be, and if such well or wells include all the wells within the responsibility of the transferor's bond, such bond will be released upon written notice by the commission to that effect.

The transferee of any oil or gas well or the ~~operation~~ operator of any such well shall be responsible for the plugging of any such well and for that purpose shall submit a new bond or, in the case of surety bond, produce the written consent of the surety of the original or prior plugging bond that the latter's responsibility shall continue. This section shall apply to transfers of any such wells made prior to the effective date of this section as well as thereafter. The original or prior bond shall not be released as to the plugging responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging of such well or wells is completed and approved.

The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging is approved, in order that, if the plugging is approved, liability under such bond may be formally terminated.

The enforcement officer is vested with the power to act for the commission as to all matters within this section.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-18.1. Exception location. If upon application for an exception location, the commission finds that a well drilled at the location prescribed by any applicable rule or order of the commission would not produce in paying quantities or, that surface conditions would substantially add to the burden or hazard of such well, or that the

drilling of such well at a location other than the prescribed location is otherwise necessary either to protect correlative rights, to prevent waste, or to effect greater ultimate recovery from oil and gas, the commission may enter an order, after notice and hearing, permitting the well to be drilled at a location other than that prescribed and shall include in such order suitable provisions to prevent the production from that well of more than its just and equitable share of the oil and gas in the pool. The application for an exception well location shall set forth the names of the lessees or owners of adjoining properties and shall be accompanied by a an acceptable plat or sketch drawn to the scale of not smaller than two inches [5.08 centimeters] equaling one mile [1.61 kilometers], accurately showing to scale the property for which the exception well location is sought and the location of the proposed well, and accurately showing to scale all other completed and drilling wells on this property and accurately showing to scale the ownership of all adjoining surrounding properties and the location of wells thereon. The applicant or its attorney shall certify that a copy of the application has been sent by certified or registered mail to all owners or lessees of properties adjoining the tract which would be affected by the exception location. The application shall be verified by some person acquainted with the facts, swearing under oath that all facts therein are within the knowledge of the affiant true and that the accompanying plat is accurately drawn to scale and correctly reflects pertinent and required data. The applicant shall state in the affidavit that a copy of the application has been sent by certified or registered mail to all owners or lessees of properties adjoining the tract which would be affected by the exception location.

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

General Authority: NDCC 38-08-04, 38-08-07

Law Implemented: NDCC 38-08-04, 38-08-07

43-02-03-25. Deviation tests and directional surveys. When any well is drilled or deepened, tests to determine the deviation from the vertical shall be taken at least every one thousand feet [304.8 meters]. When the deviation from the vertical exceeds five degrees at any point, the enforcement officer may require that the hole be straightened. Directional surveys may be required by the enforcement officer, whenever, in the enforcement officer's judgment, the location of the bottom of the well is in doubt.

A directional survey shall be made and filed with the enforcement officer on any well utilizing a whipstock or any method of deviating the well bore in a predetermined direction except to sidetrack junk in the hole, straighten a crooked hole, or to control a blowout. Two copies of the survey must be filed with the enforcement officer free of charge within thirty days of completion. However, the enforcement officer may require the directional survey to be filed immediately after completion if the survey is needed to conduct the operation of the enforcement officer's office in a timely manner. Special permits may be obtained to drill directionally in a predetermined direction as provided above, from the enforcement officer.

If the enforcement officer denies a request for a permit to directionally drill, the enforcement officer shall advise the applicant immediately of the reasons for denial. The decision of the enforcement officer may be appealed to the commission.

History: Amended effective April 1, 1980; April 30, 1981; January 1, 1983; May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-28. Safety regulation. During drilling operations all oil wells shall be cleaned into a pit or tank, not less than forty feet [12.19 meters] from the derrick floor and one hundred fifty feet [45.72 meters] from any fire hazard.

All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler or portable electric lighting generator shall be placed or remain nearer than one hundred fifty feet [45.72 meters] to any producing well or oil tank. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard.

No well shall be drilled nor production equipment installed less than one three hundred fifty three feet [~~45.72~~ 100.58 meters] from a building or residence unless agreed to in writing by the surface owner or authorized by order of the commission.

Subsurface pressure will be controlled during all drilling operations with appropriate drilling fluid and pressure control equipment.

History: Amended effective January 1, 1983; May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-31. Well log, completion, and workover reports. Within thirty days after the plugging of a well, a plugging record (form 7) shall be filed with the enforcement officer. Within thirty days after the completion of a well, or recompletion of a well in a different pool, a completion report (form 6) shall be filed with the enforcement officer, except a completion report shall be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the enforcement officer. The operator shall cause to be run an electrical, radioactivity, or other similar log, or combination of logs, of the operator's choice, from which formation tops and porosity zones can be determined. The obligation to log may be

waived by the enforcement officer or other representative if hole conditions preclude the feasibility of such logging operation or if the well is a replacement well. Such logs shall be available to the enforcement officer at the well site prior to proceeding with plugging or completion operations. Three Within thirty days after completion, two copies of all logs and surveys run shall be submitted to the enforcement officer free of charge. However, if the enforcement officer finds that the directional survey of a well is needed for the timely conduct of business, the enforcement officer may require the filing of the survey immediately after completion. In addition, operators shall file ~~three~~ two copies of drill stem test reports and charts, formation water analyses, porosity, permeability or fluid saturations, core analyses, and noninterpretive lithologic logs or sample descriptions if compiled by the operator. The commission shall furnish one copy of all logs to the geological survey.

All information furnished to the enforcement officer shall be kept confidential for not more than six months after the date such information is required by these rules to be filed, if requested by the operator in writing.

Approval must be obtained from the enforcement officer prior to perforating or recompleting a well in a reservoir other than the reservoir in which the well was originally completed.

Upon the completion, recompletion of a well, the completion of any remedial work, or attempted remedial work such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on form 4 with the enforcement officer. The report shall present a detailed account of all work done; the daily production of oil, gas, and water both prior to and after the operation; the size and depth of perforations; the quantity of sand, crude, chemical, or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the initial installation of pumping equipment, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a report (form 4) of such installation. The notice shall include all pertinent information on the pump and the operation thereof, and the daily production of the well prior to and after the pump has been installed shall also be included.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-34. Method of plugging. Before any well is abandoned, it shall be plugged in a manner which will confine permanently all oil,

gas, and water in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the commission. Casing shall be cut off at least three feet [91.44 centimeters] below the surface, and a cap shall be welded thereon. Core or stratigraphic test holes drilled to or below sands containing freshwater shall be plugged and abandoned in accordance with the applicable provisions recited above.

~~A well may be abandoned temporarily and no casing pulled upon approval of the enforcement officer. In such event, a plug shall be placed at the top of the casing, in such manner as to prevent the intrusion of any foreign matter into the well.~~

~~When drilling operations have been suspended for six months, wells shall be plugged and abandoned in accordance with regulations of the commission unless a permit for temporary abandonment has been obtained from the enforcement officer.~~

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-45. Vented casinghead gas. Pending arrangements for disposition for some useful purpose, all vented casinghead gas shall be burned. Each flare shall be equipped with an automatic ignitor or a continuous burning pilot, unless waived by the enforcement officer for good reason. The estimated volume of gas used and flared shall be reported to the enforcement officer on or before the fifth day of the second month succeeding that in which ~~dry~~ gas is received from processing plants produced.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51. Treating plant. Before construction of a treating plant and upon written application for a treating plant permit stating in detail the location, type, ~~and~~ capacity of the plant contemplated and, method of processing proposed, and the plan of operation for all plant waste, the commission shall set such application for hearing to determine whether the proposed plant and method of processing will actually and efficiently process, treat, and reclaim tank bottom emulsion and other waste oils, and whether there is need for such a plant at the proposed location thereof. No treating plant shall operate except by order of the commission. The disposition of all products and waste must be reported monthly on form 5-P. Before actual treating operations are begun, the permittee shall file with the commission a surety bond conditioned upon compliance with all laws, rules and

regulations, and orders of the commission. The bond shall be payable in the amount of twenty-five thousand dollars to the industrial commission of North Dakota.

History: Amended effective January 1, 1983; May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-55. Desertion Abandonment of wells. The removal of production equipment or the failure to produce oil or gas (other than a gas well shut in for lack of a market) for a period of one year is prima facie evidence of desertion constitutes abandonment of a producing well. Such well shall be plugged in accordance with the rules and regulations of the commission, and the site restored. The enforcement officer may grant exceptions to this section if it can be shown to its satisfaction that the well is to be utilized for saltwater disposal or enhanced recovery operations. The removal of injection equipment or the failure to use an injection well for a period of one year constitutes abandonment of an injection well. Any such well must be plugged and the site restored pursuant to applicable rules of the commission. The enforcement officer may waive the requirement to plug and grant temporary abandoned status for a period of one year for such well provided it can be demonstrated to the enforcement officer's satisfaction that the well may be used for alternative purposes related to the production of oil or gas. The enforcement officer may grant extensions to the one-year period upon application. If a well is granted temporary abandoned status, the perforations in the well must be isolated, integrity of the casing proven, and the casing sealed at the surface, all in a manner approved by the enforcement officer.

The drilling of a well may be suspended upon approval of the enforcement officer. In such event, a plug must be placed at the top of the casing in such manner as to prevent the intrusion of any foreign matter into the well. Unless otherwise authorized by the enforcement officer, when drilling operations have been suspended for six months, the well must be plugged and the site restored pursuant to applicable rules of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-80. Reports of purchasers and transporters of crude oil. On or before the first day of the second month succeeding that in which oil is removed, purchasers and transporters, including truckers, shall file with the enforcement officer a report (form 10A) showing the appropriate monthly reporting forms. The purchaser shall file on form 10 and the transporter on form 10a the amount of all crude oil removed by them from each lease during the reported month and the

disposition (form 10B) of such crude oil. The transporter shall report the disposition of such crude oil on form 10b.

Prior to removing any oil from a lease, purchasers and transporters shall obtain an approved copy of a producer's certificate of compliance and authorization to transport oil from lease (form 8) from either the producer or the enforcement officer.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-90. Notice of hearing. Upon the institution of a proceedings by application or by motion of the commission, the commission shall give at least ten days' notice (except in emergency) of the time and place of hearing thereon by one publication of such notice in newspapers of general circulation published at Bismarck, North Dakota, and in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the commission and shall conform to the other requirements provided by law. In case an emergency is found to exist by the commission which in its judgment requires the making of a rule, regulation, or order without first having a hearing, the emergency rule, regulation, or order shall have the same validity as if a hearing with respect to the same had been held after notice. The emergency rule, regulation, or order permitted by this section shall remain in force no longer than forty days from its effective date, and in any event, it shall expire when the rule, regulation, or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation, or order becomes effective.

Any person moving for a continuance of a hearing, and who is granted a continuance, shall submit twenty-five dollars to the commission to pay the cost of republication of notice of the hearing.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1990.

General Authority: NDCC 38-08-11

Law Implemented: NDCC 38-08-11

43-02-03-95. Powers and duties of examiner. The commission may by motion limit the powers and duties of any examiner in any particular case to such issues or to the performance of such acts as the commission deems expedient; however, subject only to such limitation as may be ordered by the commission, the examiner or examiners to whom any matter or proceeding is referred under this chapter shall have full authority to hold hearings on such matter or proceeding in accordance with and pursuant to this chapter. The examiner shall have the power to regulate all proceedings before the examiner and to perform all acts and take all

measures necessary or proper for the efficient and orderly conduct of such hearing, including ruling on prehearing motions, the swearing of witnesses, receiving of testimony and exhibits offered in evidence, subject to such objections as may be imposed, and shall cause a complete record of the proceeding to be made and retained.

History: Amended effective January 1, 1983; May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-101. Prehearing motion practice. In a matter pending before the commission, all prehearing motions must be served by the moving party upon all parties affected by the motion. Service must be upon a party unless a party is represented by an attorney, in which case service must be upon the attorney. Service must be made by delivering a copy of the motion and all supporting papers in conformance with one of the means of service provided for in rule 5(b) of the North Dakota Rules of Civil Procedure. Proof of service must be made as provided in rule 4 of the North Dakota Rules of Civil Procedure or by the certificate of an attorney showing that service has been made. Proof of service must accompany the filing of a motion. Any motion filed without proof of service is not properly before the commission and must be returned to the moving party.

History: Effective May 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-05-07. Mechanical integrity.

1. Prior to commencing operations, the operator of a new injection well must demonstrate the mechanical integrity of the well. All existing injection wells must demonstrate mechanical integrity at least once every five years. An injection well has mechanical integrity if:
 - a. There is no significant leak in the casing, tubing, or packer; and
 - b. There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection bore.
2. One of the following methods must be used to evaluate the absence of significant leaks:
 - a. ~~Monitoring of annulus pressure~~ ~~pressure~~ Pressure test with liquid or gas.
 - b. ~~Pressure test with liquid or gas~~ ~~monitoring~~ Monitoring of annulus pressure.

- c. Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate.
 - d. Spinner survey.
 - e. Radioactive tracer survey.
3. One of the following methods must be used to establish the absence of significant fluid movement:
- a. Well records demonstrating the presence of adequate cement to prevent such migration.
 - b. The results of a temperature or noise log.

History: Effective November 1, 1982; amended effective May 1, 1990.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

STAFF COMMENT: Chapter 43-02-09 contains all new material but is not underscored so as to improve readability.

CHAPTER 43-02-09 WORKOVER PROJECTS

Section	
43-02-09-01	Definitions
43-02-09-02	Exemption From Taxes
43-02-09-03	Notice of Intention to Begin a Workover Project
43-02-09-04	Application for Workover Project Determination
43-02-09-05	Workover Project Determination
43-02-09-06	Notice to Tax Department
43-02-09-07	Petition for Hearing

43-02-09-01. Definitions. The following definitions apply to this chapter:

1. "Continuous employment" means the specific period of time a workover rig has been obtained to perform a workover project on a qualifying well.
2. "Continuous production" means production at least twenty days each month during the latest six calendar months of production prior to the filing of the notice of intention to perform a workover project.
3. "Maximum efficient rate" means the maximum economic rate of production of oil which can be sustained under prudent

operations, using sound engineering practices, without loss of ultimate recovery.

4. "Recompletion" means the subsequent completion of a well in a different pool from the pool in which it is completed at the time of the notice given pursuant to section 43-02-09-03.
5. "Reentry" means the entering of a well that has been plugged.
6. "Workover" means the employment of a workover rig and other services for the purpose of restoring or improving producing capability of a well from the pool in which it is presently completed.
7. "Workover project" means the continuous employment of a workover rig for workovers, recompletions, or reentries.
8. "Workover rig" means any rig used to perform work on a workover project.

Upon order of the commission, an applicant may obtain an exception to the definition of "continuous production" set forth in subsection 2 if it is shown that the well was systematically produced intermittently during the latest six calendar months of production prior to the filing of the notice of intention to perform a workover project.

History: Effective May 1, 1990.
General Authority: NDCC 57-51.1-03
Law Implemented: NDCC 57-51.1-03

43-02-09-02. Exemption from taxes. Production from a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production, upon which a workover project has been performed, is exempt from taxes imposed pursuant to North Dakota Century Code chapter 57-51.1 for twelve months beginning with the first day of the third calendar month after the completion of a workover project if:

1. The commission has received a notice of intention to begin a workover project in accordance with section 43-02-09-03.
2. A workover project is performed on the well.
3. The cost of the workover project exceeds sixty-five thousand dollars, or thirty thousand dollars if the average daily production is increased at least fifty percent during the first sixty days after completion of the workover project, based upon a comparison to the average daily production for the latest six calendar months of continuous production prior to the filing of the notice of intention to begin a workover project.

History: Effective May 1, 1990.
General Authority: NDCC 57-51.1-03
Law Implemented: NDCC 57-51.1-03

43-02-09-03. Notice of intention to begin a workover project. If an exemption from taxation is sought pursuant to subsection 4 of North Dakota Century Code section 57-51.1-03, a notice of intention to begin a workover project must be filed by the well operator with the commission prior to commencement of the project. The notice of intention must be sent by certified mail to the following address:

North Dakota State Industrial Commission
Oil and Gas Division
600 East Boulevard
Bismarck, North Dakota 58505-0840

The notice of intention must include, but is not limited to, the following:

1. A sundry notice (form 4) upon which it is clearly indicated that it is a notice of intention to perform a workover project which may qualify production from the well for an exemption from taxation pursuant to subsection 4 of North Dakota Century Code section 51-51.1-03.
2. The sundry notice must contain a detailed description of the nature and scope of the workover project. The information provided must also include a description of all replacement equipment to be installed that is known to the well operator at the time of filing, and whether such equipment is new or used.
3. The average daily production during the latest six calendar months of continuous production.

History: Effective May 1, 1990.
General Authority: NDCC 57-51.1-03
Law Implemented: NDCC 57-51.1-03

43-02-09-04. Application for workover project determination. The applicant has the burden of establishing entitlement to the exemption provided in North Dakota Century Code section 57-51.1-03 and upon completion of the workover project shall submit all information necessary for a determination by the enforcement officer. The cost of a workover project includes only direct costs for material, equipment, services, and labor used in the workover project. Labor and services included must be performed onsite and materials and equipment must be used onsite. The value of capital equipment removed from the site must be deducted from the cost of the project.

The application must include the following:

1. A fee in the amount of one hundred dollars.
2. The name and address of the applicant and the name and address of the person operating the well, if different.
3. The well name and number and legal description of the well.
4. The dates during which the workover rig was in service actually performing work on the workover project, and the date the workover was completed.
5. A detailed list identifying all labor, services, and materials used and equipment replaced during the workover project, the cost of each item, and whether the replacement equipment was new or used. Also, the value of all of the equipment removed from service must be listed. The list must be verified by a person knowledgeable in the costs of workover projects and the value of used equipment. At any time the enforcement officer may require the applicant to submit actual invoices to verify any costs set forth in the application.
6. A sundry notice (form 4) detailing all work done.
7. The average daily oil production from the well during the first sixty days after completion of the project, if the costs of the project did not exceed sixty-five thousand dollars. The project is completed and the sixty-day period commences the first day of production through the wellhead equipment after the workover rig is removed from over the well.

If the application does not contain sufficient information to make a determination, the enforcement officer will advise the applicant of the additional information that must be filed in order to make a determination. If the requested additional information is not received within fifteen working days after receipt of the request, the application must be returned to the well operator.

History: Effective May 1, 1990.
General Authority: NDCC 38-08-04, 57-51.1-03
Law Implemented: NDCC 57-51.1-03

43-02-09-05. Workover project determination.

1. Upon receipt of an application for workover project determination, the enforcement officer shall review the application, information, or comments submitted by an interested person and all relevant information contained in the books, files, and records of the commission.
2. Within thirty days of the receipt of a complete application for workover project determination, or a reasonable time

thereafter, the enforcement officer shall either grant or deny the application.

3. If an application for workover project determination is denied, the enforcement officer shall enter, in writing, a determination denying the application and specifying the basis for denial. If an application is granted, the enforcement officer shall enter, in writing, a determination granting the application.
4. A copy of the determination either granting or denying the application must be forwarded by the enforcement officer by mail to the applicant and all other persons submitting written comments. It is the obligation of the applicant to notify and advise all other operators in the well and the purchaser of the crude oil of the determination of the enforcement officer.

History: Effective May 1, 1990.

General Authority: NDCC 57-51.1-03

Law Implemented: NDCC 57-51.1-03

43-02-09-06. Notice to tax department. If the enforcement officer determines a well is entitled to a tax exemption under this chapter, the enforcement officer shall send a notice to the North Dakota tax department stating:

1. That the workover project meets the requirements set forth in North Dakota Century Code section 57-51.1-03.
2. The name and number of the well.
3. The location of the well.
4. The name of the well operator applying for the tax exemption.
5. The date the notice of intention was filed.
6. The average daily production of the well during the latest six calendar months of continuous production prior to the commencement of the workover project.
7. The cost of the workover project.
8. The average daily production of the well as determined pursuant to subsection 7 of section 43-02-09-04.
9. The dates during which the workover project was performed.

The notice required under this section must be signed by a representative of the commission.

History: Effective May 1, 1990.

General Authority: NDCC 57-51.1-03
Law Implemented: NDCC 57-51.1-03

43-02-09-07. Petition for hearing. Any person adversely affected by a determination of the enforcement officer pursuant to subsection 4 of North Dakota Century Code section 57-51.1-03 or this chapter, within thirty days after receiving notice of such determination, may petition the commission for a hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and chapter 43-02-03.

In the event the North Dakota tax department, pursuant to its authority, determines an exemption was granted improperly pursuant to North Dakota Century Code section 57-51.1-03, the tax department may request a hearing on the exemption any time after the exemption was granted. If after the hearing the commission determines an exemption was improperly granted, it may revoke the exemption. The exemption may be revoked effective the date the exemption was originally granted.

History: Effective May 1, 1990.
General Authority: NDCC 57-51.1-03
Law Implemented: NDCC 57-51.1-03

TITLE 45
Insurance, Commissioner of

JUNE 1990

STAFF COMMENT: Article 45-10 contains all new material but is not underscored so as to improve readability.

ARTICLE 45-10

PETROLEUM TANK RELEASE COMPENSATION FUND

Chapter
45-10-01 General Provisions

CHAPTER 45-10-01
GENERAL PROVISIONS

Section	
45-10-01-01	Definitions
45-10-01-02	Tank Registration
45-10-01-03	Procedures for Investigation of Claim
45-10-01-04	Advisory Board
45-10-01-05	Fund Revenue Reports
45-10-01-06	Registration Fee
45-10-01-07	Reimbursement
45-10-01-08	Notification of Release Procedures
45-10-01-09	Report to Legislative Assembly and Governor

45-10-01-01. Definitions. For the purposes of this chapter, the following definitions apply:

1. "Corrective action", as defined in section 2 of chapter 341 of the 1989 Session Laws, does not include the repair or replacement of equipment or parts whether or not said equipment or parts contributed to the cause of the release.
2. "Department" means the state department of health and consolidated laboratories.
3. "Operator", as defined in section 2 of chapter 341 of the 1989 Session Laws, means any person in control of, or having responsibility for, the daily operation of a tank under this Act. This person need not be either an owner or dealer to be an operator.

History: Effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: S.L. 1989, ch. 341, § 2

45-10-01-02. Tank registration. On an annual basis, the administrator will mail to all known petroleum tank owners and operators in North Dakota a registration form and cover letter. The cover letter will explain the function of the fund and request that the tank owner or operator register all tanks owned or operated in order to be eligible for reimbursement in the event of a petroleum release. In the event of a petroleum release, no reimbursement will be made to an owner or operator of a registered tank unless the owner or operator has complied with all other state and federal regulations regarding petroleum tanks.

History: Effective June 1, 1990.

General Authority: NDCC 28-32-02; S.L. 1989, ch. 341, § 5

Law Implemented: S.L. 1989, ch. 341, § 5

45-10-01-03. Procedures for investigation of claims.

1. Appointment of claims representative. Upon receiving verification from the department of damages caused by a release for which the cleanup costs could exceed seven thousand five hundred dollars, the administrator may appoint a claims representative to investigate the release. The claims representative's functions are as follows:
 - a. Ensure the fairness of cleanup costs and that cleanup expenses are not excessive.
 - b. Function as a liaison between the owner or operator and all other parties involved in the cleanup operation.
2. Qualifications of the claims representative. The claims representative must have a general knowledge of insurance policy coverages and exclusions and must also have at least

three years of experience as an investigator of claims or equivalent experience to be evaluated by the administrator.

3. Investigation procedure. In each release investigation, the investigator shall perform each of the following duties as applicable:
 - a. Examine the location of the release.
 - b. Interview persons to elicit information regarding the release.
 - c. Examine all records and documentation concerning the release, including documentation of the corrective action taken and all expenses incurred.
 - d. Prepare a written report concerning the validity of the claim, including an estimate of the eligible damage cost.
 - e. Complete any and all other tasks or duties specified by the administrator.

History: Effective June 1, 1990.

General Authority: NDCC 28-32-02; S.L. 1989, ch. 341, § 5

Law Implemented: S.L. 1989, ch. 341, § 5

45-10-01-04. Advisory board. The administrator shall keep the board apprised of the fund's general operations. Prior to reimbursement, the administrator shall review all claims against the fund with the advisory board either through written correspondence, telephone conference calls, or board meetings.

History: Effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: S.L. 1989, ch. 341, § 5

45-10-01-05. Fund revenue reports. The administrator may obtain from the state tax commissioner's office a monthly accounting of tariffs collected from dealers, and reports as to any delinquencies or failures to pay by dealers.

History: Effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: S.L. 1989, ch. 341, § 17

45-10-01-06. Registration fee. No reimbursement may be made from the fund to the owner or operator of a tank unless the tank has been properly registered and the registration fee of twenty-five dollars for an underground tank and ten dollars for an aboveground tank has been paid prior to the discovery of the release.

If, subsequent to a tank release, it is discovered that the owner or operator has not registered all tanks, no reimbursement will be made until such time as all tanks have been properly registered and all registration fees have been paid.

History: Effective June 1, 1990.

General Authority: NDCC 28-32-02; S.L. 1989, ch. 341, § 5

Law Implemented: S.L. 1989, ch. 341, § 21

45-10-01-07. Reimbursement. Reimbursement must be made for eligible costs as determined by the administrator. The fund shall reimburse an owner or operator whose tanks are properly registered for ninety percent of the eligible costs of corrective action, including the investigation of the release, which are greater than seven thousand five hundred dollars and less than one hundred thousand dollars.

1. The reimbursement must be calculated by first deducting seven thousand five hundred dollars from the total loss or from one hundred thousand dollars, whichever is smaller. The fund will reimburse ninety percent of the balance remaining, with a maximum reimbursement of eighty-three thousand two hundred fifty dollars.
2. Reimbursement will be made for eligible costs for a corrective action including the following:
 - a. Labor.
 - b. Testing.
 - c. Use of machinery.
 - d. Materials and supplies.
 - e. Professional services.
 - f. Costs incurred by order of federal, state, or local government.
 - g. Any other costs the administrator and the advisory board deem to be reasonable to remedy cleanup of the release.
 - h. Eligible costs may not be construed to mean repair of the equipment that caused the release, loss of income or earnings, or loss of petroleum fuel or contents of tanks caused by the release.
3. In making the determination of the amount and type of costs eligible for reimbursement from the fund, the administrator shall review the written report of the claims representative, if one is contracted, and all other correspondence and expense

documentation (including itemized bills), and shall also review the final report from the department.

4. At the discretion of the administrator and after review by the advisory board, the fund may provide partial reimbursements prior to the final determination of the amount of the loss, if it is determined the cleanup is proceeding according to the proposed plan. The payment may be made to the owner or operator or the owner's or operator's assigned representative.
5. Application for reimbursement. No reimbursement will be made from the fund unless a completed application form has been received by the administrator. The application must contain, but is not limited to, the following information:
 - a. Name and address of the owner or operator.
 - b. Street or highway description of the petroleum release location.
 - c. The legal description of the release location.
 - d. The substance released.
 - e. The date the release was discovered.
 - f. Name, address, and telephone number of the contact person.
 - g. A narrative description of the release.
6. Subrogation. Prior to reimbursement for any loss, the owner or operator shall subrogate to the fund all rights, claims, and interest which the owner or operator has or may have against any party, person, persons, property, corporation, or other entity liable for the subject loss, and shall authorize the fund to sue, compromise, or settle in the name of the owner or operator or otherwise, all such claims. The subrogation agreement required by this section must be prescribed and produced by the administrator.

History: Effective June 1, 1990.

General Authority: NDCC 28-32-02; S.L. 1989, ch. 341, § 5

Law Implemented: S.L. 1989, ch. 341, § 22

45-10-01-08. Notification of release procedures. Once the administrator has received notification of a release from the department by written correspondence, the administrator shall undertake or cause to be undertaken the following procedures as applicable:

1. Input the release information into the claim register.

2. Verify that the tank owner or operator has registered the tanks involved in the release, and all other tanks owned or operated. Verification must be made by comparing the registration list and the original registration form on file with the administrator.
3. If not registered, send a letter of denial to inform the owner or operator of the requirements with a carbon copy to the department and close the claim.
4. If the tank is registered, send the tank owner or operator an application for reimbursement.
 - a. Contact the department to make a preliminary determination of the size of the release and to obtain any information they have regarding the release.
 - b. If the release site has been inspected by the department and they have determined that only a small amount of petroleum was involved in the release, the administrator will notify the owner or operator that, based on information received by the department, it appears that cleanup costs will not exceed seven thousand five hundred dollars. If the owner or operator concurs, the fund will close its file regarding the release.
 - c. If the information provided to the administrator indicates that the cleanup costs of the release will approach or exceed seven thousand five hundred dollars, the administrator shall:
 - (1) Investigate the release;
 - (2) Employ an independent adjuster to investigate the release; or
 - (3) Coordinate with an insurance company to investigate the release.
5. Obtain the adjuster's first report within twenty days of the adjuster's receipt of the claim.
6. The adjuster's subsequent progress reports must be submitted to the fund at least every thirty days.
7. Review and summarize all final claim reports with the advisory board.
8. Reimburse the owner or operator.

History: Effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: S.L. 1989, ch. 341, § 5

45-10-01-09. Report to legislative assembly and governor. This report, as required by section 30 of chapter 341 of the 1989 Session Laws, must include, but is not limited to, the following information:

1. Total number of releases.
2. Total number of releases denied because of nonregistered tanks.
3. Total number of releases denied because of expenses not exceeding seven thousand five hundred dollars.
4. Total number of releases investigated by the fund.
5. Total amount paid out for releases, along with a breakdown including a printout of individual names and amounts paid out and the average payout per release.
6. Brief summary of the fund's operating expenses.
7. Recommended changes, if any, to 1989 House Bill No. 1297.
8. Recommendation to continue or terminate the program.

History: Effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: S.L. 1989, ch. 341, § 30

JULY 1990

STAFF COMMENT: Chapter 45-03-11 contains all new material but is not underscored so as to improve readability.

CHAPTER 45-03-11
NOTICE, CONSENT, AND DISCLOSURE FOR TESTING
OF BLOOD OR OTHER BODY FLUIDS

Section	
45-03-11-01	Definitions
45-03-11-02	Requirement for Informed Consent and Disclosure
45-03-11-03	Prescribed Form of Informed Consent
45-03-11-04	Informed Consent - Legal Requirements
45-03-11-05	Notification of Test Results

45-03-11-01. Definitions.

1. "Informed consent form" means a printed document on which an individual may signify that individual's informed consent for testing for the presence of an antibody to the human immunodeficiency virus or authorize the disclosure of any test results obtained.
2. "Informed consent for testing or disclosure" means written consent on an informed consent form by an individual to the administration of a test to that individual for the presence of an antibody to the immunodeficiency virus or to the disclosure to a specified person of the results of a test administered to the consenting individual.

History: Effective July 1, 1990.
General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-30-19

45-03-11-02. Requirement for informed consent and disclosure. Any insurance company, health maintenance organization, fraternal benefit society, benevolent society, or nonprofit health service corporation conducting business in this state which requests its applicants for insurance coverage to provide a body fluid sample for the purpose of testing and analysis which may include testing to determine the presence of antibodies or antigens to the human immunodeficiency virus (HIV), also known as the AIDS virus, as part of its underwriting process, shall, prior to any such testing, obtain from the applicant the applicant's informed consent for testing or disclosure of the test results as provided under section 45-03-11-04.

History: Effective July 1, 1990.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-30-19

45-03-11-03. Prescribed form of informed consent. Any insurance company, health maintenance organization, fraternal benefit society, benevolent society, or nonprofit health service corporation which subjects an applicant for insurance coverage to a test for the presence of an antibody or antigen to the human immunodeficiency virus under section 45-03-11-02 shall provide the applicant with an informed consent form and shall obtain the applicant's signature on the form. The form must contain at least the following language printed in type no smaller than ten point, and must take substantially the following form:

EXAMINER _____
ADDRESS _____

INSURER _____
ADDRESS _____

NOTICE AND CONSENT FOR BLOOD (OR OTHER BODY FLUID)
TESTING AND DISCLOSURE WHICH MAY INCLUDE AIDS VIRUS (HIV)
ANTIBODY/ANTIGEN TESTING

To determine your insurability, the Insurer named above (the Insurer) has requested that you provide a sample of a body fluid for testing and analysis. All tests will be performed by a licensed laboratory.

Tests may be performed to determine the presence of antibodies or antigens to the Human Immunodeficiency Virus (HIV), also known as the AIDS virus. Other tests which may be performed include determinations of blood cholesterol and related lipids (fats) and screening for liver or kidney disorders, diabetes, and immune disorders.

CONFIDENTIALITY

All test results will be treated confidentially. The results of tests will be reported by the laboratory to the Insurer identified on this form. When necessary for business reasons in connection with insurance

you have or have applied for with the Insurer, the Insurer may disclose test results to others such as its affiliates, reinsurers, employees, or contractors to whom disclosure is reasonably necessary in the ordinary course of business to carry out the purpose for which that disclosure is authorized. If the Insurer is a member of the Medical Information Bureau (MIB, Inc.), and if the test results for HIV antibodies/antigens are other than normal, the Insurer will report to the MIB, Inc., a generic code which signifies only a nonspecific test abnormality. If your HIV test is normal, no report will be made about it to the MIB, Inc. Other test results may be reported to the MIB, Inc., in a more specific manner. The organizations described in this paragraph may maintain the test results in a file or data bank. There may be other disclosure of test results as permitted by law or authorized by you.

NOTIFICATION OF RESULTS

If your HIV test results are normal, no routine notification will be sent to you. If you are a resident of North Dakota and your HIV test is other than normal, the Insurer will disclose test results to the North Dakota Department of Health and Consolidated Laboratories as required by law. If the HIV test results are other than normal, the North Dakota Department of Health and Consolidated Laboratories will contact you.

SIGNIFICANCE OF POSITIVE TEST RESULTS AND AFFECT ON APPLICATION FOR INSURANCE

Positive HIV antibody/antigen test results do not mean that you have AIDS, but that you are at significantly increased risk of developing AIDS or AIDS-related conditions. Federal authorities say that persons who are HIV antibody/antigen positive should be considered infected with the AIDS virus and capable of infecting others.

Positive HIV antibody or antigen test results or other significant blood abnormalities will adversely affect your application for insurance. This means that your application may be declined, that an increased premium may be charged, or that other policy changes may be necessary.

I have read and I understand this Notice of Consent for Blood (or Other Body Fluid) Testing and Disclosure which may include HIV antibody/antigen testing. I voluntarily consent to the testing of my blood or other body fluids and the disclosure of the test results as described above.

I understand that I have the right to request and receive a copy of this authorization. A photocopy of this form will be as valid as the original.

Proposed Insured (print)

Date of Birth

Signature of Proposed Insured Date State of Residence
or Parent/Guardian

History: Effective July 1, 1990.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-30-19

45-03-11-04. Informed consent - Legal requirements. The form prescribed in section 45-03-11-03 is not in lieu of any legal requirements applicable to persons drawing or testing blood for human immunodeficiency virus to obtain informed consent for testing or disclosure.

History: Effective July 1, 1990.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-30-19

45-03-11-05. Notification of test results. If the results of testing subject to this chapter are other than normal, the insurer shall notify the North Dakota department of health and consolidated laboratories. The written notification must indicate the specific nature of the abnormal test results and must also indicate all persons to whom the test results have been disclosed. The notice must also inform the department of the specific tests and procedures used to determine the proposed insured as an other than normal test result.

History: Effective July 1, 1990.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-30-19

TITLE 51
Milk Stabilization Board

JUNE 1990

51-01-02-05. Notice and hearing in rulemaking matters.

1. ~~Definition.~~ A rulemaking matter is any proceeding which results in the adoption, amendment, or repeal of rules of practice, regulations, or of any stabilization plan.
2. ~~Initiation.~~ At any time the board may on its own motion, initiate a proceeding in a rulemaking matter. In addition, any person desiring to initiate a proceeding in a rulemaking matter shall petition the board stating clearly the action requested and the reasons therefor. Upon receipt of such a petition, the board shall, within thirty days thereafter, deny the petition in writing or schedule the matter for a public hearing.
3. ~~Notice of hearing.~~ Prior to the adoption, amendment, or repeal of a rule of practice, regulation, or stabilization plan, the board shall give at least fourteen days notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may make presentations in connection therewith.
4. ~~Service of notice of hearing.~~ The notice shall be mailed to all persons who have made timely requests at the executive secretary's office for advance notice of proceedings in rulemaking matters of the board. Such notice shall also be published once at least fourteen days prior to the hearing in the official newspaper in the county or counties in which the subject matter involved is located.

5. ~~Public hearings.~~ In any proceeding involving regulations or stabilization plans, a public hearing for the purpose of hearing testimony and allowing oral presentation must be held.
6. ~~Written data.~~ In addition to presenting testimony and allowing oral presentation at a public hearing, all interested persons, and the board itself, may submit data, views, or arguments in writing which shall become a part of the official record in the rulemaking matter to be considered by the board.
7. ~~Official record.~~ The official record of each rulemaking proceeding shall include the transcript of any public hearing held as a part thereof, and all written data, views, or arguments, submitted in writing by interested persons, including the board. The official record shall be filed in the principal office of the board and shall be available at all times for inspection by any interested person.
8. ~~Submission to attorney general.~~ Before being adopted, all rules of practice, regulations, and stabilization plans issued by the board shall be submitted to the attorney general for the attorney general's opinion as to its legality.
9. ~~Filing of rulemaking matters.~~ A copy of each rulemaking matter adopted by the board shall be filed in the office of the attorney general, and when filed, shall have the force and effect of law until amended or repealed by the agency, or until the same has been declared invalid by final court decision. A copy of each rulemaking matter adopted by the board, and the attorney general's opinion thereon, shall also be filed in the office of the legislative council.
10. ~~Notice of adoption of rulemaking matter.~~ In addition to the foregoing, notice of the board's action in a rulemaking matter shall be given by the board to all persons who have made timely requests therefor at the office of the executive secretary, and all persons who entered an appearance at the public hearing. Repealed effective June 1, 1990.

General Authority: NDCC ~~4-18.1-03(20)~~, ~~4-18.1-20~~, ~~28-32-02~~, ~~28-32-03~~, ~~28-32-05(7)~~

Law Implemented: NDCC ~~4-18.1-20~~, ~~28-32-02~~

TITLE 61
Pharmacy, Board of

JULY 1990

61-02-06-02. Requirements for storage and retrieval of prescription information. Electronic data processing equipment, when used to store prescription information, shall meet the following requirements:

1. Guarantee the confidentiality of the information contained in the data bank.
2. A computerized system must provide on line retrieval via catho ray tube or hard-copy printout of original prescription order information for those prescription orders which are currently authorized for refilling. If more refills are authorized, it must be noted on hard copy of prescription or a new prescription must be produced.
3. Be capable of producing a hard-copy daily summary of controlled substance transactions. This should be done monthly and filed with the semiannual inventory.
4. Be capable of recording and carrying in the record all dates of refills of any prescription and the initials of the pharmacist.
5. Be capable of producing a patient profile indicating all drugs being taken and the date of refills of these prescriptions, as required by North Dakota Century Code section 43-15-31.1.
6. Be capable of being reconstructed in the event of a computer malfunction or accident resulting in destruction of the data bank.
7. Be capable of reconstructing information, by daily backups in the event of a computer malfunction or accident resulting in destruction of the data bank.

History: Effective August 1, 1983; amended effective July 1, 1990.
General Authority: NDCC ~~28-32-02~~, 43-15-10(9), 43-15-10(12),
43-15-10(14)
Law Implemented: NDCC ~~28-32-02~~, 43-15-10(9), 43-15-10(12), 43-15-10(14)

61-02-06-03. Original prescription shall be retained on file. In all cases where electronic data processing equipment is used, the original prescription (hard copy) shall be retained on file according to law to assure access to the information contained on the prescription in the event of a computer breakdown.

History: Effective August 1, 1983; amended effective July 1, 1990.
General Authority: NDCC ~~28-32-02~~, 43-15-10(9), 43-15-10(12),
43-15-10(14)
Law Implemented: NDCC ~~28-32-02~~, 43-15-10(9), 43-15-10(12), 43-15-10(14)

61-02-06-04. Written policy and procedures. Written policy and procedures must be available at each computer location, detailing responsibilities of each pharmacist relative to the operation of the computer and its records.

History: Effective July 1, 1990.
General Authority: NDCC ~~28-32-02~~, 43-15-10(9), 43-15-10(12),
43-15-10(14)
Law Implemented: NDCC 43-15-10(9), 43-15-10(12), 43-15-10(14)

61-03-03-04. Intern registration. All pharmacy students who have not registered with the board of pharmacy pursuant to North Dakota Century Code section 43-15-18 shall register with the board of pharmacy as an intern upon acceptance into the first professional year of the pharmacy curriculum (third college year) of the college of pharmacy.

History: Effective July 1, 1990.
General Authority: NDCC ~~28-32-02~~, 43-15-10(12), 43-15-10(14)
Law Implemented: NDCC 43-15-18

STAFF COMMENT: Article 61-09 contains all new material but is not underscored so as to improve readability.

ARTICLE 61-09

PRESCRIPTION DRUG INVENTORY OF AMBULANCE SERVICES

Chapter
61-09-01 Prescription Drug Inventory of Ambulance Services

CHAPTER 61-09-01
PRESCRIPTION DRUG INVENTORY OF AMBULANCE SERVICES

Section	
61-09-01-01	Prescription Drug Safeguard and Control Policy
61-09-01-02	Requirement of Supplier of Ambulance Service Drugs

61-09-01-01. Prescription drug safeguard and control policy. Each ambulance service shall adopt a written prescription drug safeguard policy which, as a condition precedent to obtaining prescription drugs for ambulance service purposes, at a minimum, must include the following requirements:

1. All prescription drugs must be obtained from a licensed pharmacy or registered pharmacist, which may include a hospital pharmacy. The prescription drugs must be the property of the pharmacy or pharmacist and not the property of the ambulance service.
2. The initial inventory of prescription drugs must be obtained by an ambulance service only upon the written authorization of the ambulance service's medical director who must be a "practitioner" as defined by subsection 17 of North Dakota Century Code section 43-15-01.
3. The pharmacist-in-charge of the licensed pharmacy or the registered pharmacist must be responsible for the security and accountability of the prescription drug inventory obtained by an ambulance service.
4. Dispensing or administration of all prescription drugs must be pursuant to a standing order, oral instructions, or prescription of a practitioner.
5. All medications administered must be promptly documented on a written prescription, signed by the prescribing practitioner or the advanced life support medical director on a monthly basis.
6. All replacement of prescription drugs must be documented on a written prescription and signed by a practitioner.
7. Expired, damaged, or unused prescription drugs must be returned to a licensed pharmacy or pharmacist. The pharmacist, on a monthly basis, shall either check the drug box or review a perpetual inventory for expired drugs.
8. Replacement of lost, stolen, or misused prescription drugs requires written authorization of the ambulance service's medical director.

9. At the beginning of each shift, ambulance (advanced life support) personnel shall conduct a checklist procedure to verify that the drug boxes contain all the required items and that the controlled substances are intact. The checklist procedure is not complete until it is signed by the individuals responsible for possible use of the drug boxes.
10. Controlled substances must be sealed in a double lock secure system. A record separate from the other prescription drugs is to be kept. Documentation on a duplicate form should include:
 - a. Patient's name and address (if available);
 - b. Medication and strength or amount given;
 - c. Date;
 - d. Physician's name; and
 - e. The signature of the individual administering the controlled substance.
11. Any unused portion of a prescription drug must be returned for disposal or destruction to the emergency room where the patient is being brought for care. The return of the unused prescription drug should be documented in writing at the emergency room by the ambulance personnel and cosigned by a registered pharmacist or registered nurse as a witness.
12. When a controlled substance needs replacement, a copy of the completed form with the necessary documentation is to be given to the licensed pharmacy or registered pharmacist, preferably the same facility where the original supply was obtained. This will ensure better control of the dispensing of these controlled substances. A form with serial and unit numbers must create an audit trail to account for all drugs and control sheets dispensed.

History: Effective July 1, 1990.

General Authority: NDCC 28-32-02, 43-15-10(12), 43-15-10(14)

Law Implemented: NDCC 28-32-03

61-09-01-02. Requirement of supplier of ambulance service drugs. The pharmacist-in-charge of the licensed pharmacy or the pharmacist supplying prescription drugs to an ambulance service, prior to supplying said drugs, shall review the written prescription drug safeguard policy of the ambulance service to determine that all of section 61-09-01-01 requirements are contained therein and that the ambulance service is complying with those requirements. No prescription drugs may be supplied to an ambulance service if the requirements of section

61-09-01-01 are not contained in the written prescription drug safeguard policy or if the ambulance service is not in compliance with these requirements.

History: Effective July 1, 1990.

General Authority: NDCC 28-32-02, 43-15-10(12), 43-15-10(14)

Law Implemented: NDCC 28-32-03

TITLE 67

Public Instruction, Superintendent of

JULY 1990

STAFF COMMENT: Article 67-05 contains all new material but is not underscored so as to improve readability.

ARTICLE 67-05

SCHOOL DISTRICT BOUNDARY RESTRUCTURING

Chapter	
67-05-01	Definitions
67-05-02	Qualification as a Consortium
67-05-03	The Planning Grant Application
67-05-04	The Final Report

CHAPTER 67-05-01
DEFINITIONS

Section	
67-05-01-01	Definitions

67-05-01-01. Definitions. For purposes of this article, the following terms used in North Dakota Century Code chapter 15-27.6 mean:

1. "Consortium" means a group of contiguous school districts which qualify under section 67-05-02-01.
2. "Contiguous school districts" means school districts or parts of school districts which have a border or part of a border

which is common to a border or part of a border of another school district in the consortium.

3. "Cooperative activities" means any management, transportation, educational, or administrative activities shared between school districts in the consortium.
4. The "final report" includes:
 - a. An analysis of the data studied along with findings and recommendations;
 - b. A plan for the restructuring of the participating school districts;
 - c. A time line for the implementation of the plan; and
 - d. Plans for the establishment of an interim district board to oversee the implementation of the plan.
5. "Financial assistance" means the moneys that a consortium receives pursuant to the award of a planning grant.
6. "Interim district board" means the board which is established after the preliminary plan has been approved.
7. "Planning grant" means a financial grant from the department of public instruction to consortiums for the study and development of a plan for the restructuring of the school districts.
8. "Preliminary plan" means that plan included in the final report which will be used for the restructuring of the participating school districts.
9. "Restructuring" means changes in school district boundaries which increase educational opportunities of students and the sharing of school administrators and administrative services.
10. "State board" means the state board of public school education.
11. "Superintendent" means the superintendent of public instruction.
12. "Supplemental payments" means payments for up to five years which, upon approval of the preliminary plan, participating school districts will receive in addition to normal state aid and which will range from one hundred twenty-five dollars to one hundred sixty-five dollars per student.
13. "Technical assistance" means assistance by department of public instruction staff in the development and implementation

of a plan for the restructuring of contiguous school districts.

History: Effective July 1, 1990.
General Authority: NDCC 15-27.6-01
Law Implemented: NDCC 15-27.6

CHAPTER 67-05-02 QUALIFICATION AS A CONSORTIUM

Section
67-05-02-01 Qualification

67-05-02-01. Qualification. In order to qualify as a consortium which may receive a planning grant pursuant to North Dakota Century Code chapter 15-27.6, the group of contiguous school districts must:

1. Consist of six school districts, four of which must operate kindergarten through grade twelve or grade one through grade twelve programs;
2. Consist of four school districts, each of which operate kindergarten through grade twelve or grade one through grade twelve programs and enroll a minimum total of six hundred students;
3. Consist of four school districts, each of which operate kindergarten through grade twelve or grade one through grade twelve programs and encompass a total of at least seven hundred square miles; or
4. Consist of any group of school districts which substantially meets one of the foregoing criteria and which the department of public instruction determines is committed to studying and developing a plan to increase educational opportunities for students and to sharing school administrators and administrative services.

History: Effective July 1, 1990.
General Authority: NDCC 15-27.6-01
Law Implemented: NDCC 15-27.6

CHAPTER 67-05-03 THE PLANNING GRANT APPLICATION

Section
67-05-03-01 The Planning Grant Application

67-05-03-01. The planning grant application.

1. The group of contiguous school districts which qualify as a consortium may apply for a planning grant. The planning grant application must be submitted to the department of public instruction and must include:
 - a. A list of the school districts included in the consortium, with appropriate documentation of the date and vote by which each school board joined the consortium and agreed to submit a planning grant application.
 - b. An estimate of the cost of the study and analysis of each of the subject areas listed in subsection 2 of North Dakota Century Code section 15-27.6-02.
 - c. A summary of cooperative activities currently in operation within the consortium.
 - d. A projection of how cooperation will increase educational opportunities for students.
 - e. A projection of how cooperation will facilitate the sharing of school administrators and administrative services.
2. The planning grant application must be reviewed by the department of public instruction and submitted by the superintendent to the state board.
3. The superintendent shall make a recommendation to the state board to either approve or disapprove the award of a planning grant based on the following criteria:
 - a. The application includes appropriate documentation of the vote by each school district board to join the consortium and to submit the planning grant application.
 - b. The degree to which the applicant meets qualifying criteria for enrollment, square miles, or number of districts.
 - c. The extent to which the planning grant application indicates the nature and extent of the study and analysis to be done in each of the subject areas listed in subsection 2 of North Dakota Century Code section 15-27.6-02 plus any other subject areas in which cooperative activity is contemplated.
 - d. The extent to which documentation is provided to support the cost estimates of studying and analyzing each of the

subject areas identified in the planning grant application.

- e. The documentation provided identifies all existing cooperative activities currently in operation between any of the contiguous school districts in the consortium.
4. Upon approval of the award of a planning grant:
 - a. The superintendent shall provide financial assistance and, if requested, technical assistance.
 - b. The consortium shall study and analyze each of the subject areas listed in subsection 2 of North Dakota Century Code section 15-27.6-02.
 5. Upon completion of the study, the consortium shall prepare a final report.

History: Effective July 1, 1990.
General Authority: NDCC 15-27.6-01
Law Implemented: NDCC 15-27.6

CHAPTER 67-05-04 THE FINAL REPORT

Section
67-05-04-01 The Final Report

67-05-04-01. The final report. Final reports must be submitted to the department of public instruction.

1. The final report must include:
 - a. A list of the school districts included in the consortium with appropriate documentation of the date and vote by which each school board approved the preliminary plan for the restructuring of the participating school districts.
 - b. The information required by subsection 3 of North Dakota Century Code section 15-27.6-02.
2. The time line referred to in subdivision c of subsection 3 of North Dakota Century Code section 15-27.6-02 must include a projected date when voters of participating school districts, pursuant to appropriate sections of North Dakota Century Code chapter 15-27.3, will vote either to approve or disapprove the plan for restructuring of the participating school districts.

3. The preliminary plan is prepared by the consortium and submitted to the participating school boards for approval and inclusion in the final report which is then submitted to the superintendent. The preliminary plan must include:
 - a. A plan and time line for restructuring of school district boundaries within the consortium.
 - b. A plan and time line for cooperative activities which increase educational opportunities of students.
 - c. A plan and time line for the sharing of school administrators and administrative services.
4. The final report will be reviewed by the department of public instruction and submitted by the superintendent to the state board.
5. The superintendent shall make a recommendation to the state board to either approve or disapprove the preliminary plan based on the following criteria:
 - a. The final report includes appropriate documentation of the date and vote by which each school board approved the preliminary plan for the restructuring of the participating school districts and agreed to submission of the report to the department of public instruction for approval and funding.
 - b. The extent to which the report contains a comprehensive summary of the findings in the areas studied as outlined in the planning grant application.
 - c. The extent to which the final report provides recommendations and plans for cooperative activities the consortium has agreed to undertake.
 - d. The extent to which the planned cooperative activities include significant steps to increase educational opportunities of students.
 - e. The extent to which the final report includes plans for sharing of school administrators and administrative services.
 - f. The extent to which the final report includes time lines for the implementation of cooperative activities.
6. Upon approval of the preliminary plan:
 - a. The superintendent shall make available supplemental payments as provided in North Dakota Century Code section 15-27.6-05.

- b. An interim district board must be established, pursuant to North Dakota Century Code section 15-27.6-03, whose powers and duties are outlined in North Dakota Century Code section 15-27.6-04.
7. In order to be eligible to receive supplemental payments for the entire 1990-91 school year, final reports must be submitted to the department of public instruction by June 15, 1990, or at a later date with prior approval of the superintendent.

History: Effective July 1, 1990.
General Authority: NDCC 15-27.6-01
Law Implemented: NDCC 15-27.6

TITLE 69
Public Service Commission

MAY 1990

69-05.2-01-01. Applicability of article. ~~The requirements of this~~ This article ~~apply~~ 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 ~~used, disturbed, or redisturbed in connection with or to facilitate mining or to comply with the requirements of~~ subject to North Dakota Century Code chapter 38-14.1 or of this article.

1. ~~The requirements of this~~ This article ~~do~~ does not apply to any of the following activities:
 1. ~~a.~~ The extraction of coal by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner.
 2. ~~The extraction, for commercial purposes, of less than two hundred fifty tons [226.80 metric tons] of coal by surface mining activities within twelve consecutive calendar months at any one location and not affecting more than two acres [0.81 hectares] of land during the entire life of the mining operation.~~
 3. ~~b.~~ The Coal removal of any coal pursuant to for reclamation operations under North Dakota Century Code chapter 38-14.2.
 4. ~~c.~~ The Coal extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction, except as provided by chapter 69-05.2-03.
 5. ~~d.~~ The Coal extraction of two hundred fifty tons [226.80 metric tons] or less of coal pursuant to 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.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-02, 38-14.1-10, 38-14.1-37

69-05.2-01-02. Definitions. The definitions ~~contained~~ in North Dakota Century Code section 38-14.1-02 ~~shall~~ apply to this article and, ~~as used throughout this article,~~ the following terms have the specified meaning except where otherwise indicated:

1. "Adjacent area" means land located outside the affected area or permit area, depending on the context in which "adjacent area" is used, where air, surface or ground water, fish, wildlife, vegetation, alluvial valley floors, or other resources may be adversely impacted by surface coal mining and reclamation operations.
2. "Affected area" means any land or water upon or in which surface coal mining and reclamation operations are conducted or located.
3. "Agricultural activities" means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, ~~but are not limited to,~~ the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. Those uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.

4. "Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, ~~but are not limited to,~~ the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.
5. "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.
6. "Best technology currently available" means equipment, ~~devices, systems, methods,~~ or techniques which will:
 - a. Prevent, to the extent possible, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state law.
 - b. Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable.
 - c. The term includes equipment, ~~devices, systems, methods,~~ or techniques which are currently available anywhere as determined by the commission, even if they are not in routine use.
 - d. The term includes, ~~but is not limited to,~~ construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and ~~design of~~ ponds pond design.
 - e. The commission ~~shall have~~ has the discretion to determine the best technology currently available on a case-by-case basis.
7. "Blaster" means a person directly responsible for the use of explosives in surface coal mining operations who is certified under chapter 69-05.2-31.
8. "Cash" means:
 - a. ~~All cash items except cash:~~
 - ~~(1) Restricted by an agreement.~~
 - ~~(2) Described as earmarked for a particular purpose.~~
 - b. ~~Short-term investments such as stocks, bonds, notes, and certificates of deposit, where the intent and ability to~~

sell them in the near future is established by the permittee.

9. "Cemetery" means any area of land where human bodies are interred.
- ~~10.~~ 9. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.
- ~~11.~~ 10. "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.
- ~~12.~~ 11. "Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to, the following: loading facilities, storage and stockpile facilities, sheds, shops and other buildings, water treatment and water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.
- ~~13.~~ 12. "Coal processing waste" means earth materials which are ~~combustible, physically unstable, or toxic forming, which are~~ wasted or otherwise and separated from product coal and ~~slurried or otherwise transported from coal preparation plants after physical or chemical processing, during~~ cleaning, or concentrating, or other processing or preparation of coal.
- ~~14.~~ 13. "Collateral bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee and which is supported by the deposit with the commission of cash, negotiable bonds of the United States or of North Dakota, or negotiable certificates of deposit of any bank ~~organized or transacting authorized to do business in the state of North Dakota or a perfected lien or security interest in real property.~~
- ~~15.~~ 14. "Combustible material" means organic material that is capable of burning, either by fire or through a chemical process (oxidation), accompanied by the evolution of heat and a significant temperature rise.
- ~~16.~~ "Common size comparative balance sheet" means item amounts from a number of the permittee's or permit applicant's successive yearly balance sheets arranged side by side in a single statement followed by common size percentages whereby:

- a. The asset total is assigned a value of one hundred percent.
 - b. The total of liabilities and owner equity is also assigned a value of one hundred percent.
 - c. Each individual asset, liability and owner equity item is shown as a fraction of one of the one hundred percent totals.
- ~~17.~~ 15. "Common size comparative income statement" means a permittee's income statement amounts for a number of successive yearly periods arranged side by side in a single statement followed by common size percentages whereby net sales are assigned a one hundred percent value, and then each statement item is shown as a percentage of net sales.
- ~~18.~~ 16. "Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings, or functions of local civic organizations, or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health, or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.
- ~~19.~~ 16. "Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.
- ~~20.~~ 17. "Complete inspection" means an onsite review of a permittee's or operator's compliance with all permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article, within the entire area disturbed or affected by surface coal mining and reclamation operations and includes the collection of evidence with respect to every violation of those conditions or requirements.
- ~~21.~~ 18. "Complete permit application" means an application for a surface coal mining and reclamation operations permit, which contains all information required by North Dakota Century Code chapter 38-14.1 and this article, to allow the commission to initiate the notice requirements of North Dakota Century Code section 38-14.1-18 and a technical review for the purpose of complying with the permit approval or denial standards of North Dakota Century Code section 38-14.1-21 and of this article.
- ~~22.~~ 19. "Cooperative soil survey" means a field or other investigation that locates, describes, classifies, and interprets for use

the soils in a given area. ~~Such~~ The survey must meet the standards of the national cooperative soil survey standards and is the type of survey that is usually made for counties operational conservation planning by the United States department of agriculture soil conservation service in cooperation with agencies of the state and, in some cases, other federal agencies. If such the survey is not available and a permit applicant is required to cause such a soil have a survey to be made, the scale of the soils map produced shall scale must be 1:20,000.

- ~~23-~~ 20. "Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included.
21. "Cumulative impact area" means the surface and ground water systems which may be affected until final bond release by:
- a. The proposed operation and all existing surface coal mining and reclamation operations;
 - b. Any operations for which a permit application has been submitted to the regulatory authority; and
 - c. All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.
- ~~24-~~ 22. "Developed water resources" means, for land use purposes, land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.
- ~~25-~~ 23. "Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings, and also means any other arrangement where the employee may benefit from the employee's holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.
- ~~26-~~ 24. "Disturbed area" means those areas that have been affected by surface coal mining and reclamation operations. ~~Those areas~~ Areas are classified as "disturbed" until reclamation is complete and the performance bond or other assurance of performance required by North Dakota Century Code chapter 38-14.1 and this article is released.

- ~~27.~~ 25. "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.
- ~~28.~~ 26. "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.
- ~~29.~~ 27. "Emergency spillway" means the spillway designed to convey excess water through, over, or around a dam.
- ~~30.~~ 28. "Employee" means, for purposes of restrictions of financial interests of employees: any person employed by the commission as a state employee who performs any function or duty under North Dakota Century Code chapter 38-14.1; advisory board, commission members, or consultants who perform any decisionmaking functions for the commission under authority of state law or regulations; and any other state employee who performs any decisionmaking function or duty under a cooperative agreement with the commission. This definition does not include: the public service commissioners, who file annually with the director of the office of surface mining reclamation and enforcement, United States department of the interior; and members of advisory boards or commissions established in accordance with state laws or regulations to represent multiple interests, such as the North Dakota reclamation advisory committee.
- ~~31.~~ 29. "Ephemeral stream" means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.
- ~~32.~~ 30. "Essential hydrologic functions" means with respect to alluvial valley floors, the role of the valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, usefully available for agricultural activities, by reason of its position in the landscape and the characteristics of its underlying material. A combination of those functions provides a water supply during extended periods of low precipitation.
- a. The role of the valley floor in collecting water includes accumulating runoff and discharge from aquifers in sufficient amounts to make the water available at the alluvial valley floor greater than the amount available from direct precipitation.
 - b. The role of the alluvial valley floor in storing water involves limiting the rate of discharge of surface water,

holding moisture in soils, and holding ground water in porous materials.

- c. The role of the alluvial valley floor in regulating the natural flow of surface water results from the characteristic configuration of the channel floodplain and adjacent low terraces.
- d. The role of the alluvial valley floor in regulating the natural flow of ground water results from the properties of the aquifers which control inflow and outflow.
- e. The role of the alluvial valley floor in making water usefully available for agricultural activities results from the existence of floodplains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants, from the presence of earth materials suitable for the growth of agriculturally useful plants, from the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation, from the natural control of alluvial valley floors in limiting destructive extremes of stream discharge, and from the erosional stability of earth materials suitable for growth of agriculturally useful plants.

~~33-~~ 31. "Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction began prior to August 1, 1980.

~~34-~~ 32. "Extraction of coal as an incidental part" means the extraction of coal which is necessary to enable government-financed construction to be accomplished. Only that coal extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.

~~35-~~ 33. "Fish and wildlife habitat" means lands or waters used partially or wholly for the maintenance, production, protection, or management of species of fish or wildlife.

~~36-~~ 34. "Flood irrigation" means, with respect to alluvial valley floors, supplying water to plants by natural overflow, or the diversion of flows in which the surface of the soil is largely covered by a sheet of water.

- ~~37.~~ 35. "Fragile lands" means geographic areas containing natural, ecologic, scientific, or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, state and national natural landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under North Dakota Century Code section 38-14.1-07.
- ~~38.~~ 36. "Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.
- ~~39.~~ 37. "General area" means, with respect to hydrology, the topographic and ground water basin surrounding an extended mining plan area or permit area which is of sufficient size, including areal extent and depth, to include one or more watersheds containing perennial streams and ground water zones and to allow assessment of the probable cumulative impacts on the quality and quantity of surface and ground water systems in the basins.
- ~~40.~~ 38. "Government-financed construction" means construction funded fifty percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or other equivalent, or in-kind payments.
- ~~41.~~ 39. "Government financing agency" means a federal, state, county, municipal, or local unit of government, or a department, bureau, agency, or office of the unit which, directly or through another unit of government, finances construction.
- ~~42.~~ 40. "Ground cover" means the area of ground covered by vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.
- ~~43.~~ 41. "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

- ~~44.~~ 41. "Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.
- ~~45.~~ 42. "Historic lands" means historic or cultural districts, places, structures, or objects, including archaeological and paleontological sites, national historic landmark sites, sites listed on or eligible for listing on the state historic sites registry or the national register of historic places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.
- ~~46.~~ 43. "Historically used for cropland" means:
- a. Lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations;
 - b. Lands that the commission determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or
 - c. Lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.
- ~~47.~~ 44. "Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.
- ~~48.~~ 45. "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.
- ~~49.~~ "Important farmland inventory map" means the map published by the soil conservation service, as required by 7 GFR 657, that

~~identifies and locates prime farmland and other farmlands of statewide or local importance.~~

- ~~46.~~ 46. "Impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semiliquid materials.
- ~~50.~~ 47. "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.
- ~~51.~~ 48. "Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child, and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.
- ~~52.~~ 49. "Industrial and commercial" means, for land use purposes, land used for:
- a. Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities such as chemical manufacturing, petroleum refining, and fabricated metal products manufacture. Land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included. Support facilities include, but are not limited to, all rail, road, and other transportation facilities.
 - b. Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments. Land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, parking, storage, or shipping facilities.
- ~~53.~~ 50. "Intermittent stream" means a stream or part of a stream that flows continuously for at least one month of the calendar year as a result of ground water discharge or surface runoff.
- ~~54.~~ 51. "Irreparable damage to the environment" means any damage to the environment that cannot be corrected by action of the permit applicant or the operator.

- ~~55-~~ 52. "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur.
- ~~56-~~ 53. "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.
- ~~57-~~ 54. "Materially damage the quantity or quality of water" means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.
- ~~58-~~ 55. "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.
- ~~59-~~ 56. "Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for the germination and growth of plants.
- ~~60-~~ 57. "Native grassland" means land on which the natural potential plant cover is principally composed of native grasses, grasslike plants, forbs, and shrubs valuable for forage and is used for grazing, browsing, or occasional hay production. Land used for facilities in support of ranching operations which is adjacent to or an integral part of these operations is also included.
- ~~61-~~ 58. "Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.
- ~~62-~~ 59. "Noxious plants" means species as defined in North Dakota Century Code section 63-01.1-02 that have been included on the official state list of noxious weeds.
- ~~63-~~ 60. "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.
- ~~64-~~ 61. "Operation plan" means a plan submitted by a permit applicant which sets forth a detailed description of the surface coal

mining operations proposed to be conducted during the term of the permit within the proposed permit area.

- ~~65-~~ 62. "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.
- ~~66-~~ 63. "Partial inspection" means an onsite review of a permittee's or operator's compliance with some of the permit conditions and requirements imposed under North Dakota Century Code chapter 38-14.1 and this article and includes the collection of evidence of any violation of those conditions or requirements.
- ~~67-~~ 64. "Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff.
- ~~68-~~ 65. "Performing any function or duty" means those decisions or actions which, if performed or not performed by an employee, affect surface coal mining and reclamation operations under North Dakota Century Code chapter 38-14.1.
- ~~69-~~ 66. "Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations which has been approved for retention by the commission and other appropriate state agencies.
67. "Permanent impoundment" means an impoundment requested for retention as part of the postmining land use by the surface owner and approved by the commission and, if required, by other state and federal agencies.
- ~~70-~~ 68. "Person having an interest which is or may be adversely affected or person with a valid legal interest" includes:
- a. Any person who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
 - b. Any person whose property is or may be adversely affected by surface coal mining and reclamation operations or any related action of the commission.
 - c. Any federal, state, or local governmental agency.
- ~~71-~~ 69. "Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. "Precipitation event" also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

- ~~70.~~ 70. "Prime farmland" means those lands defined by the secretary of agriculture in 7 CFR 657 and historically used for cropland. Prime farmlands are identified based on cooperative soil surveys and soil mapping units designated as prime farmland by the United States soil conservation service.
- ~~72.~~ 71. "Principal shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.
- ~~73.~~ 72. "Principal spillway" means an ungated pipe conduit with minimum diameter of twelve inches [30.48 centimeters] constructed for the purpose of conducting water through the embankment back to streambed elevation without erosion.
- ~~74.~~ 73. "Probable cumulative impacts" means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.
- ~~75.~~ 74. "Probable hydrologic consequence" means the projected result of proposed surface coal mining and reclamation operations which may reasonably be expected to change the quantity or quality of the surface and ground water; the surface or ground water flow, timing, and pattern; the stream channel conditions; and the aquatic habitat on the permit area and adjacent areas.
- ~~76.~~ 75. "Productivity" means the vegetative yield produced by a unit area for a unit of time.
- ~~77.~~ 76. "Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.
- ~~78.~~ 77. "Public building" means any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings.
- ~~79.~~ 78. "Public office" means a facility under the direction and control of a governmental entity which is open to the public on a regular basis during reasonable business hours.
- ~~80.~~ 79. "Public park" means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.
- ~~81.~~ 80. "Public road" means a public way for purposes of vehicular travel, including the entire area within the right of way, all public ways acquired by prescription as provided by statute, and all land located within two rods [10.06 meters] on each side of all section lines. This definition does not include

those public ways or section lines which have been vacated as permitted by statute or abandoned as provided by statute.

- ~~82.~~ 81. "Qualified laboratory" means a designated public agency, private consulting firm, institution, or analytical laboratory which can provide the required determination or statement under the small operator assistance program.
- ~~83.~~ 82. "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.
- ~~84.~~ 83. "Recreation" means, for land use purposes, land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.
- ~~85.~~ 84. "Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the ten-year, twenty-four-hour precipitation event would be that twenty-four-hour precipitation event expected to occur on the average once in ten years. Magnitude of such events are as defined by the national weather service technical paper no. 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.
- ~~86.~~ 85. "Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the commission. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.
86. "Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semiliquid material.
87. "Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.
88. "Residential" means, for land use purposes, single-family and multiple-family housing, mobile home parks, and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

89. "Return on investment" means the relation of net profit for the last yearly period to ending net worth.
90. "Road" means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations. A road consists of the entire area within the right of way, including the roadbed, shoulders, parking and side area, approaches, structures, ditches, and such contiguous appendages as are necessary for the total structure.

The term does not include:

- a. Temporary nonsurfaced trails used for vehicle access or suitable plant growth material transport where such trails do not appreciably alter the original contour.
 - b. Coal haulage ramps within the pit area.
 - c. Public roads.
91. "Safety factor" means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.
92. "Sedimentation pond" means a primary sediment control structure designed, constructed, and maintained in accordance with this article and including, but not limited to, a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.
93. "Shelterbelt" means a strip or belt of trees or shrubs planted by man in or adjacent to a field or next to a farmstead, feedlot, or road. Shelterbelt is synonymous with windbreak.
94. "Significant, imminent environmental harm to land, air, or water resources" is determined as follows:
- a. An environmental harm is any adverse impact on land, air, or water resources, including, but not limited to, plant and animal life.
 - b. An environmental harm is imminent if a condition, practice, or violation exists which is causing such harm or may reasonably be expected to cause such harm at any

time before the end of the reasonable abatement time that would be set under North Dakota Century Code section 38-14.1-28.

c. An environmental harm is significant if that harm is appreciable and not immediately repairable.

- ~~94.~~ 95. "Significant recreational, economic, or other values incompatible with surface coal mining operations" means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on offsite areas which could be affected by mining. Those values to be evaluated for their importance include:
- a. Recreation, including hiking, boating, camping, skiing, or other related outdoor activities.
 - b. Agriculture, aquaculture, or production of other natural, processed, or manufactured products which enter commerce.
 - c. Scenic, historic, archaeologic, esthetic, fish, wildlife, plants, or cultural interests.
- ~~95.~~ 96. "Slope" means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance, e.g., 1v to 5h = 20 percent = 11.3 degrees.
- ~~96.~~ 97. "Soil horizons" means contrasting layers of soil lying one below the other, parallel, or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:
- a. A horizon. The uppermost layer in the soil profile, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.
 - b. B horizon. The layer immediately beneath the A horizon. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.
 - c. C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.
- ~~97.~~ 98. "Spoil" means overburden that has been disturbed during surface coal mining operations.

- ~~98.~~ 99. "Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties such as by providing a protective surface coating.
- ~~99.~~ 100. "Subirrigation" means, with respect to alluvial valley floors, the supplying of water to plants from a semisaturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:
- a. Diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;
 - b. Increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;
 - c. Mottling of the soils in the root zones;
 - d. Existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or
 - e. An increase in streamflow or a rise in ground water levels, shortly after the first killing frost on the valley floor.
- ~~+00.~~ 101. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities.
- ~~+01.~~ 102. "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.
- ~~+02.~~ 103. "Surety bond" means an indemnity agreement in a sum certain payable to the state of North Dakota executed by the permittee or permit applicant which is supported by the performance guarantee of a corporate surety licensed to do business in the state of North Dakota.
- ~~+03.~~ 104. "Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on July 1, 1979.
- ~~+04.~~ 105. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, or by recovery of coal from a deposit that is not in its original geologic location.

- ~~105.~~ 106. "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a forty-five hundredths micron filter.
- ~~106.~~ 107. "Tame pastureland" means land used for the long-term production of predominantly adapted, domesticated species of forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland which is adjacent to or an integral part of these operations is also included.
- ~~107.~~ 108. "Temporary diversion" means a diversion of a stream or overland flow which is used during surface coal mining and reclamation operations and not approved by the commission to remain after reclamation as part of the approved postmining land use.
109. "Temporary impoundment" means an impoundment used during surface coal mining and reclamation operations, but not approved by the commission to remain as part of the postmining land use.
- ~~108.~~ 110. "Ton" means two thousand pounds avoirdupois [0.90718 metric ton].
- ~~109.~~ 111. "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.
- ~~110.~~ 112. "Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.
- ~~111.~~ 113. "Transfer, assignment, or sale of rights" means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the commission.
- ~~112.~~ 114. "Unconsolidated streamlaid deposits holding streams" means, with respect to alluvial valley floors, all floodplains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than three feet [0.91 meters] in bankfull width and greater than six inches [15.24 centimeters] in bankfull depth.

~~113.~~ 115. "Undeveloped rangeland" means, for purposes of alluvial valley floors, lands generally used for livestock grazing where such use is not specifically controlled and managed.

~~114.~~ 116. "Upland areas" means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

~~115.~~ 117. "Valid existing rights" means:

a. Except for roads:

(1) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorizes the permit applicant to produce coal by a surface coal mining operation; and

(2) The person proposing to conduct surface coal mining operations on such lands either:

(a) Had been validly issued or had made a good faith attempt to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct such operations on those lands; or

(b) Can demonstrate to the commission that the coal is both needed for, and is immediately adjacent to, an ongoing surface coal mining operation for which all permits were obtained prior to August 3, 1977.

b. For roads:

(1) A recorded right of way, recorded easement, or a permit for a road recorded as of August 3, 1977; or

(2) Any other road in existence as of August 3, 1977.

c. Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon applicable North Dakota case law concerning interpretation of documents conveying mineral rights or, where no applicable North Dakota case law exists, upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant that the parties to the document actually contemplated a right to

conduct the same surface mining activities for which the applicant claims a valid existing right.

d. "Valid existing rights" does not mean mere expectation of a right to conduct surface coal mining operations.

~~116.~~ 118. "Viable economic unit" means, with respect to prime farmland, any tract of land identified as prime farmland by the state conservationist of the soil conservation service that has been historically used for cropland.

~~117.~~ 119. "Violation notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

~~118.~~ 120. "Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

~~119.~~ 121. "Willful violation" means an act or omission which violates North Dakota Century Code chapter 38-14.1, this article, or individual permit conditions, committed by a person who intends the result which actually occurs.

~~120.~~ 122. "Woodland" means land where the primary premining natural vegetation is trees or shrubs. ~~This includes both natural wooded areas and shelterbelts and other woody plantings made by man.~~

~~120.~~ 123. "Woody plants" means trees, shrubs, half-shrubs, and woody vines.

History: Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987; May 1, 1990.

General Authority: NDCC 38-14.1-03, 38-14.1-38

Law Implemented: NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

69-05.2-01-03. Promulgation of rules - Notice - Hearing.

1. The commission may, ~~at any time and on its own motion,~~ propose ~~to promulgate~~ new rules under this article or ~~to amend~~ propose amendments or ~~repeat repealers of~~ any rule under this article and ~~shall~~ will hold a public hearing in accordance with the procedures of this section.

2. Any person or governmental agency may ~~at any time~~ petition the commission to adopt ~~new rules or to,~~ amend, or repeal any rule under this article. Upon receipt of the petition, the commission ~~shall~~ will determine if the petition ~~sets forth facts, technical justification, and law which may provide~~

provides a reasonable basis for proposing the issuance, amendment, or repeal of a rule.

3. If the ~~commission determines that the~~ petition has a reasonable basis, the commission will propose the rule, amendment, or repealer and hold a public hearing shall be held on any proposed adoption, amendment, or repeal of rules under this article the proposal.
4. The commission ~~shall cause~~ will publish notice of the date, time, and place of the public hearing ~~to be published~~ in the official newspapers of each county in which surface coal mining operations occur and in other daily newspapers of general circulation in the general vicinity of ~~such those~~ counties.
5. The commission will publish notice of hearing ~~shall be published~~ once not less than thirty days before the hearing date set for hearing and ~~shall will~~ advise all interested persons of the opportunity to submit written comments and to appear and testify at the public hearing to offer oral testimony.
6. The ~~period for~~ public comment period on the proposed adoption, amendment, or repeal of any rule under this article ~~shall will~~ close at the end of the public hearing, unless extended by the commission.
7. The commission ~~shall will~~ consider all written comments and oral testimony received before ~~final~~ adoption, amendment, or repeal of any rule under this article.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 28-32-02, 38-14.1-03

Law Implemented: NDCC 28-32-02, 38-14.1-34, 38-14.1-41

69-05.2-01-04. Notice of citizen suits.

1. A person who intends to initiate a civil action on one's own behalf under North Dakota Century Code section 38-14.1-40 shall give notice of intent to do so.
2. Notice shall be given by certified mail to the commission.
3. Notice shall be given by certified mail to the alleged violator, if the complaint alleges a violation of North Dakota Century Code chapter 38-14.1, this article, a permit condition, or any ~~orders issued by the~~ commission order.
4. Service of notice ~~under this section~~ is complete upon mailing to the last known address of the person being notified.

5. A person giving notice regarding an alleged violation shall state, to the extent known:
 - a. Sufficient information to identify the provision of North Dakota Century Code chapter 38-14.1, this article, a permit or order allegedly violated.
 - b. The act or omission alleged to constitute a violation.
 - c. The name, address, and telephone numbers of the person or persons responsible for the alleged violation.
 - d. The date, time, and location of the alleged violation.
 - e. The name, address, and telephone number of the person giving notice.
 - f. The name, address, and telephone number of legal counsel, if any, of the person giving notice.
6. A person giving notice of an alleged failure by the commission to perform a mandatory act or duty under North Dakota Century Code chapter 38-14.1 or this article shall state, to the extent known:
 - a. The provision containing the mandatory act or duty allegedly not performed.
 - b. Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty.
 - c. The name, address, and telephone number of the person giving notice.
 - d. The name, address, and telephone number of legal counsel, if any, of the person giving notice.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-40

69-05.2-01-05. Computation of time.

1. Except as otherwise provided, computation of time ~~under this article~~ is based on calendar days.
2. In computing any period of prescribed time, the beginning day on which the designated period of time begins is not included. The last day ~~of the period~~ is included unless it is a Saturday, Sunday, or legal holiday on which the commission is not open for business, in which event the period runs until

the end of the next day which is not a Saturday, Sunday, or legal holiday.

3. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of ~~prescribed time~~ is seven days or less.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03

69-05.2-01-06. Intervention.

1. Any person, including any department, agency, or instrumentality of the state, local, or federal government, may petition ~~for leave~~ to intervene at any stage of a proceeding conducted under North Dakota Century Code chapter 38-14.1 or this article.
2. ~~A~~ The petitioner ~~for leave to intervene~~ shall incorporate ~~in the petition~~ a statement setting forth the interest of the petitioner and, where required, a showing of why the ~~petitioner's~~ interest is or may be adversely affected.
3. The commission ~~shall~~ will grant intervention where the petitioner:
 - a. Had a statutory right to initiate the proceeding in which the petitioner wishes to intervene; or
 - b. Has an interest which is or may be adversely affected by the outcome of the proceeding.
4. If neither subdivision a nor subdivision b of subsection 3 apply, the commission ~~shall~~ will consider the following in determining whether intervention is appropriate:
 - a. The nature of the issues;
 - b. The adequacy of representation of petitioner's interest which is provided by the existing parties to the proceeding;
 - c. The petitioner's ability ~~of the petitioner~~ to present relevant evidence and argument; and
 - d. The effect of intervention on the commission's implementation of its statutory mandate.
5. Any person, including any department, agency, or instrumentality of the state, local, or federal government, granted ~~leave to intervene~~ intervention in a proceeding may

participate in such proceeding as a full party. If an intervenor wishes to participate in a limited capacity, the extent and ~~the~~ terms of the participation ~~shall~~ will be in the discretion of the commission.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03

69-05.2-01-07. Petitions for award of costs and expenses - Answer
- Awards - Judicial review.

1. Any person may file a petition for an award of costs and expenses, including attorneys' fees, reasonably incurred as a result of ~~that person's~~ participation in any administrative proceeding under North Dakota Century Code chapter 38-14.1 or this article, which results in a final order being issued by the commission.
2. The petition ~~for an award of costs and expenses, including attorneys' fees,~~ must be filed with the commission within forty-five days ~~of after~~ receipt of ~~such the~~ order. Failure to ~~make a~~ timely filing of the petition ~~file~~ may constitute a waiver of the right to ~~such~~ an award.
3. ~~A~~ The petition ~~filed under this section shall~~ must include the name of the person from whom costs and expenses are sought, and ~~the following shall be submitted in support of the petition:~~
 - a. An affidavit setting forth in detail all costs and expenses, including attorneys' fees, reasonably incurred for, or in connection with, ~~the person's~~ participation in the proceeding;
 - b. Receipts or other evidence of ~~such those~~ costs and expenses; and
 - c. Where attorneys' fees are claimed, evidence concerning the hours expended ~~on the case,~~ the customary commercial rate ~~of payment~~ for ~~such similar~~ services in the area, and the experience, reputation, and ability of the ~~individual or~~ individuals performing the services.
4. Any person served with a copy of the petition ~~shall have~~ has thirty days from service of the petition ~~within which to file~~ an answer to ~~such~~ petition.
5. Appropriate costs and expenses, including attorneys' fees, may be awarded:

- a. To any person from the permittee if the person initiates ~~any~~ administrative proceedings reviewing enforcement actions, upon a finding that a violation of North Dakota Century Code chapter 38-14.1, this article, or the permit ~~has~~ occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the commission determines that the person made a substantial contribution to the full and fair determination of the issues.
 - b. To any person, other than a permittee or the permittee's representative, from the commission if the person initiates or participates in any proceeding under North Dakota Century Code chapter 38-14.1 or this article upon a finding that the person made a substantial contribution to a full and fair determination of the issues.
 - c. To a permittee from the commission when the permittee demonstrates that the commission or its authorized representative issued a cessation order, a notice of violation, or an order to show cause why a permit should not be suspended or revoked, in bad faith and ~~for the purpose of harassing to harass~~ or ~~embarrassing~~ embarrass the permittee.
 - d. To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under North Dakota Century Code section 38-14.1-30 or participated in ~~such a~~ the proceeding in bad faith ~~for the purpose of harassing to harass~~ or ~~embarrassing~~ embarrass the permittee.
 - e. To the commission where it demonstrates that any person applied for review pursuant to North Dakota Century Code section 38-14.1-30 or that any person participated in ~~such a~~ the proceeding in bad faith and ~~for the purpose of harassing to harass~~ or ~~embarrassing~~ embarrass the government.
6. An award under this section may include:
 - a. All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation or participation in a proceeding under North Dakota Century Code chapter 38-14.1 or this article; and
 - b. All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award.
 7. Any person aggrieved by a decision concerning on the award of costs and expenses in an administrative proceeding ~~under North Dakota Century Code chapter 38-14.1 or this article~~ shall have

~~the right to judicial~~ may seek review of ~~such~~ the decision, ~~pursuant to~~ under North Dakota Century Code section 38-14.1-35.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-35, 38-14.1-36

69-05.2-02-01. Powers and duties of the commission relative to restrictions on financial interests. The commission ~~shall~~ will:

1. ~~Provide advice, assistance, and guidance to all~~ Advise, assist, and guide employees required to file statements ~~pursuant to~~ under section 69-05.2-02-02.
2. Promptly review the statement of employment and financial interests and supplements, if any, filed by each an employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation on prohibited financial interests.
3. Resolve prohibited financial interest situations interests by ~~ordering or initiating~~ remedial action or by reporting the violations to the director of the office of surface mining reclamation and enforcement within the United States department of the interior who is responsible for initiating action to ~~impose~~ seeking penalties.
4. Certify ~~on that~~ each statement that review has been made, that has been reviewed and any prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement.
5. Furnish a blank statement forty-five days ~~in advance of~~ before the filing date established by subsection 1 of section 69-05.2-02-04 to each employee required to file a statement.
6. ~~Inform annually~~ Annually inform each employee required to file a statement of the name, address, and telephone number of the person ~~whom~~ they may contact for advice and counseling.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-02-02. Duties of employees relative to restrictions on financial interests. Employees performing ~~any~~ functions or duties under North Dakota Century Code chapter 38-14.1 shall:

1. Have no direct or indirect financial interest in coal mining operations prohibited financial interests.
2. File a fully completed complete statement of employment and financial interest with the commission upon entrance to duty beginning employment and annually thereafter on the specified filing date.
3. Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

History: Effective August 1, 1980; amended effective May 1, 1990.
 General Authority: NDCC 38-14.1-38
 Law Implemented: NDCC 38-14.1-38

69-05.2-02-03. Penalty for failure to file statement. An employee who fails to file the required statement of employment and financial interests shall be is subject to removal from the employee's position.

History: Effective August 1, 1980; amended effective May 1, 1990.
 General Authority: NDCC 38-14.1-38
 Law Implemented: NDCC 38-14.1-38

69-05.2-02-04. Filing dates.

1. Employees performing functions or duties under North Dakota Century Code chapter 38-14.1 shall file annually on February first of each year or on such other date as may be provided by the commission.
2. New employees hired, appointed, or transferred to perform functions or duties under North Dakota Century Code chapter 38-14.1 will be are required to file at the time of entrance to duty upon beginning employment.
3. New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after filing their initial statement was filed.

History: Effective August 1, 1980; amended effective May 1, 1990.
 General Authority: NDCC 38-14.1-38
 Law Implemented: NDCC 38-14.1-38

69-05.2-02-05. Reporting requirements.

1. Each employee required to file a statement of employment and financial interests shall report, on the form provided by the commission, all employment and financial interests of the

employee, the employee's spouse, minor children, or other relatives who are full-time residents of the employee's home. ~~The report shall be on a form provided by the commission.~~

2. ~~Listing of all~~ All of the following financial interests. The statement will set forth the following information regarding any financial interest must be listed:

a. Employment. Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary, or other income arrangement as a result of prior or current employment. The employee, the employee's spouse, or other resident relative is not required to report a retirement plan from which the employee will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of commission actions ~~taken by the commission.~~

b. Securities. Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements, including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs, or regulated investment companies not specializing in underground and surface coal mining operations.

c. Real property. Ownership, lease, royalty, or other interests or rights in land or minerals. Employees are not required to report lands developed and occupied for a personal residence.

d. Creditors. Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions, such as banks, savings and loan associations, and credit unions, which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short-term debts for current and ordinary household and living expenses.

3. Employee certification, and, if applicable, a listing of exceptions:

a. The statement will provide for a signed certification by the employee that to the best of the employee's knowledge:

(1) None of the listed financial interests represent an a prohibited financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate statement; and

(2) The information shown on the statement is true, correct and complete.

- b. An employee is expected to have complete knowledge of ~~the employee's~~ personal involvement in business enterprises such as a sole proprietorship and partnership, ~~the employee's~~ outside employment and the outside employment of the spouse and other covered relatives, and be aware of the information ~~contained~~ in the annual financial statement or other corporate or business reports ~~routinely~~ circulated to investors or routinely made available to the public.
- c. The exceptions shown in the ~~employee~~ certification ~~of the form~~ must provide enough information for the commission to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:
- (1) List the financial interests.
 - (2) Show the number of shares, estimated value, or annual income of the financial interests.
 - (3) Include any other information which the employee believes should be considered in determining whether ~~or not~~ the interest ~~represents a~~ is prohibited interest.
- d. Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing penalties.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-38

Law Implemented: NDCC 38-14.1-38

69-05.2-02-06. Gifts and gratuities.

1. Except as provided in subsection 2, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a coal company which:
 - a. Conducts or is seeking to conduct, operations or activities ~~that are~~ regulated by the commission; or
 - b. Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

2. The prohibitions in subsection 1 do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employer, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:
 - a. Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and
 - b. Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.
3. An employee who violates the provisions of this section shall be subject to removal ~~from the employee's position.~~

History: Effective August 1, 1980; amended effective May 1, 1990.
 General Authority: NDCC 38-14.1-38
 Law Implemented: NDCC 38-14.1-38

69-05.2-02-07. Remedial action to resolve prohibited interests.

1. Remedial action to effect resolutions. If an employee has a prohibited financial interest, the commission ~~shall~~ will promptly ~~advise~~ order the employee ~~that remedial action which will to resolve the prohibited interest is required~~ it within ninety days.
2. Remedial action may include:
 - a. Reassignment ~~of the employee~~ to a position ~~which performs~~ having no function or duty under North Dakota Century Code chapter 38-14.1;
 - b. Divestiture of the prohibited financial interest; or
 - c. Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.
3. Reports of noncompliance. ~~If ninety days after an employee has been notified to take remedial action that employee is not in compliance with the requirements of North Dakota Century Code chapter 38-14.1 and this chapter, the commission shall report the facts of the situation~~ The commission will report unresolved cases to the director of the office of surface mining reclamation and enforcement within the United States department of the interior who shall will determine whether

action to impose to seek penalties should be initiated. The report ~~shall~~ will include the original or a certified true copy of the employee's statement and any other pertinent information pertinent to the determination, including a statement of current actions being taken at the time the report is made.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-38
Law Implemented: NDCC 38-14.1-38

69-05.2-02-08. Appeal from order for remedial action. Any employee aggrieved by an order for remedial action to resolve prohibited financial interests may request review of the order within thirty days after the order was issued by filing a written request for review, stating the reasons therefor, with the secretary of the commission for presentation to the commission for its deliberation and final decision. Any employee aggrieved by a commission order to resolve prohibited financial interests may submit a request for review to the commission secretary within thirty days. The commission ~~shall~~ will act on the request for review within thirty days and ~~shall~~ notify the aggrieved employee of ~~their~~ the decision in writing. If the employee does not agree with the written decision of the commission, the employee may appeal, in writing, to the director of the central personnel division for a review.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-38
Law Implemented: NDCC 38-14.1-38

69-05.2-03-01. Incidental coal extraction - Possession of documents. Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the extraction operation, the documentation required by section 69-05.2-03-02.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-37

69-05.2-03-02. Incidental coal extraction - Information to be maintained onsite. Any person extracting coal incident to government-financed highway or other construction who extracts more than two hundred fifty tons [226.80 metric tons] of coal or affects more than two acres {0.81 hectares} shall maintain, on the site of the extraction operation and available for inspection, documents which show:

1. A description of Describe the construction project.

2. ~~The~~ Show the exact location of the construction, right of way, or the boundaries of the area which will be directly affected by the construction.
3. ~~The~~ Identify the government agency which is providing the financing and the kind and amount of public financing, including the percentage of ~~the entire construction~~ all costs represented by the government financing.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-37

69-05.2-04-01. Areas unsuitable for mining - Permit application review procedures.

1. Upon receipt of a complete application for a surface coal mining and reclamation operation permit, ~~the~~ The commission ~~shall~~ will review the complete permit application to determine whether surface coal mining the proposed operations are limited or prohibited under North Dakota Century Code section 38-14.1-07 on the lands which would be disturbed by the proposed operation.
2. Where the proposed operation would be located on any lands listed in subsections 1 through 5 of North Dakota Century Code section 38-14.1-07, the commission ~~shall~~ will reject the application if the ~~permit~~ applicant had no valid existing rights for the area on August 3, 1977, or if the operation did not exist on that date. The national park service or the United States fish and wildlife service will be notified of requests for a determination of valid existing rights pertaining to areas under their jurisdiction and shall have thirty days from receipt of notification to respond. A further thirty days will be granted upon request. If no timely response is received, the commission may make the necessary determinations based on available information.
3. Where the proposed operation would include federal lands within the boundaries of any national forest, and the permit applicant seeks a determination that mining is permissible under subsection 2 of North Dakota Century Code section ~~38-14.1-07~~, the permit applicant shall submit a permit application Applications for mining federal lands within a national forest must also be submitted to the office of surface mining reclamation and enforcement of the United States department of the interior for processing under 30 CFR subchapter D to determine if mining is permissible under subsection 2 of North Dakota Century Code section 38-14.1-07.
4. Where the proposed mining operation ~~is to~~ will be conducted within one hundred feet [30.48 meters] measured horizontally

of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the permit applicant proposes to relocate any public road, the commission shall will:

- a. Require the permit applicant to obtain necessary approvals of the road authority with jurisdiction over the public road.
 - b. Provide for the following, as appropriate, if not included in the road authority's approval process by the authority with jurisdiction over the public road:
 - (1) An opportunity Opportunity for a public hearing at which any member of the public may participate in the locality of the proposed mining operations for the purpose of determining in the locality of the proposed operations to determine whether the interests of the public and affected landowners will be protected.
 - (2) Notice of a public hearing and publication of it in a newspaper of general circulation in the affected locale of a public hearing at least two weeks before the hearing.
 - (3) Make a Its written finding based upon information received at the public hearing findings within thirty days after completion of the hearing as to on whether the interests of the public and affected landowners will be protected from the proposed mining operations.
5. Where the proposed surface coal mining operations would be conducted within five hundred feet [152.40 meters] measured horizontally of any occupied dwelling or farm building, the permit applicant shall submit with the application The applicant shall also submit the following, if applicable:
- a. If proposed operations are to be conducted within five hundred feet [152.40 meters] of any occupied dwelling, a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver and stating that the owner and signator had the legal right to deny mining and waived that right. The waiver must be knowingly made and separate from a lease or deed unless the lease or deed contains an explicit waiver.
 - (1) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine

within five hundred feet [152.40 meters] of ~~such~~ the dwelling, a new waiver ~~shall~~ is not be required.

- (2) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver as required under this subsection from the owner of an occupied dwelling, that waiver ~~shall remain~~ is effective against subsequent purchasers who had actual knowledge or constructive notice of the existing waiver at the time of purchase.
 - b. If proposed operations are to be conducted within five hundred feet [152.40 meters] of a farm building, documentation showing that the provisions of compliance with North Dakota Century Code chapter 38-18 have been complied with.
6. Where the proposed surface coal mining operation is proposed to come within three hundred feet [91.44 meters] of any public park or any places listed on the national register of historic places or the state historic sites registry, the commission ~~shall~~ will transmit to the appropriate federal, state, or local agencies with jurisdiction over or a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing the following:
 - a. A request for that agency's agency approval or disapproval of the operations.
 - b. A notice to the appropriate requiring agency that it must respond response within thirty days from receipt of the request.
7. A commission determination by the commission that a person holds or does not hold a valid existing right or that surface coal mining operations did or did not exist on August 3, 1977, ~~shall be~~ is subject to administrative review under North Dakota Century Code section sections 38-14.1-30 and judicial review under North Dakota Century Code section 38-14.1-35.

History: Effective August 1, 1980; amended effective June 1, 1986; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04, 38-14.1-07

69-05.2-04-02. Areas unsuitable for mining - Exploration. Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to under North Dakota Century Code section 38-14.1-05 and regulations of this chapter does not prohibit coal exploration operations in the area, if conducted in accordance with according to North Dakota Century Code chapter 38-12.1

and the regulations promulgated thereunder chapter 43-02-01. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the appropriate state agency to ensure that exploration does not interfere with any value for which the area has been was designated unsuitable for surface coal mining.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-08

69-05.2-04-03. Areas unsuitable for mining - Petitions for designating lands unsuitable.

1. Right to petition. Any person having an interest which is or may be adversely affected ~~has the right to~~ may petition the commission to ~~have an area designated as~~ designate an area unsuitable for surface coal mining operations, or ~~to have terminate~~ an existing designation terminated. Petitions must be in writing, and signed and acknowledged by the petitioner.
2. Designation. A petitioner shall petition to designate must include the following information in the petition:
 - a. ~~The~~ A United States geological survey topographic map showing the perimeter, location, and size of the area covered by the petition.
 - b. Allegations of facts and supporting evidence, covering all lands in the petition area, which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations. This information must meet the criteria in North Dakota Century Code section 38-14.1-05 and assume that mining practices required under this article would be followed if the area were to be mined. Each of the allegations should be specific as to the mining operation, if known, and the portion of the petitioned area and the petitioner's interests, and be supported by evidence that tends to establish the validity of the allegation for the mining operation or portion of the area.
 - c. A description of how mining ~~of~~ the area has affected or may adversely affect people, land, air, water, or other resources.
 - d. The petitioner's name, address, and telephone number.
 - e. ~~Identification of the~~ The petitioner's interest which is or may be adversely affected.
 - f. Any other readily available information required by the commission.

3. Termination. A petitioner shall petition to terminate must include the following information in the petition:
- a. The A United States geological survey topographic map showing the perimeter, location, and size of the area covered by the petition.
 - b. Allegations of facts with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on Allegations of facts covering all lands for which termination is proposed. Each allegation must be specific as to the mining operation, if any, and to the portions of the area and petitioner's interests to which the allegation applies. The allegations must be supported by evidence not contained in the record of the designation proceeding that tends to establish their validity for the mining operation or portion of the area, assuming that mining practices required under this article would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented. Allegations and supporting evidence should be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:
 - (1) The nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in subsection 2 of North Dakota Century Code section 38-14.1-05;
 - (2) Reclamation now being technologically and economically feasible, if the designation was based on the criteria found in subsection 1 of North Dakota Century Code section 38-14.1-05; or
 - (3) The resources or condition not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining those operations during and after mining, if the designation was based on the criteria found in subsection 2 of North Dakota Century Code section 38-14.1-05.
 - c. The petitioner's name, address, and telephone number.

d. ~~Identification of the~~ The petitioner's interest which is or may be adversely affected by ~~the~~ continuation of the designation.

e. Any other readily available information required by the commission.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-06

69-05.2-04-04. Areas unsuitable for mining - Initial processing - Recordkeeping - Notification requirements for designating lands unsuitable.

1. Within thirty days of receipt of a petition, the commission ~~shall~~ will notify the petitioner by certified mail whether ~~or not~~ the petition is complete under section 69-05.2-04-03.
2. The commission ~~shall~~ will determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the commission finds ~~there are not any~~ no identified coal resources in that area, it ~~shall~~ will return the petition to ~~the petitioner~~ with a statement of ~~the~~ findings.
3. The commission may reject frivolous petitions for designations or terminations of designations which are frivolous and those not stating a prima facie case. Once the requirements of section 69-05.2-04-03 are met, no party shall bear any burden of proof, but each accepted petition ~~shall~~ will be considered and acted upon ~~by the commission pursuant to~~ under the procedures of this chapter.
4. When considering a petition for an area which was previously and unsuccessfully proposed for designation, the commission ~~shall~~ will determine if the new petition presents new allegations of facts. If ~~the petition does not contain new~~ allegations of facts not, the commission ~~shall not consider the petition and shall~~ will return the petition to the petitioner it, with a statement of ~~its~~ findings and a reference to the record of the previous designation proceedings ~~where the facts were considered.~~
5. If the commission determines that the petition is incomplete or frivolous, ~~it shall~~ the commission will return ~~the petition to the petitioner,~~ it with a written statement of the reasons for the determination and in the case of an incomplete petition, the ~~categories of~~ information needed to make the petition complete. A petitioner ~~who has filed to whom an incomplete petition has been returned~~ shall then have an additional thirty days ~~within which~~ from the date the

- ~~petitioner receives the commission's written statement to resubmit the petition to the commission.~~ The permit application review period provided by subsection 3 of section 69-05.2-05-01 ~~shall~~ will be suspended until the petition is resubmitted or ~~until~~ the additional thirty-day period has expired, whichever occurs first.
6. The commission ~~shall~~ will notify the ~~person who submits a petition~~ petitioner of any permit application for a permit received which proposes to include any area covered by the petition.
 7. Any ~~petitions~~ petition received after the close of the public comment period specified in ~~the notice requirements of~~ subsection 1 of North Dakota Century Code section 38-14.1-18 on a permit application relating to the same permit area ~~shall~~ will not prevent the commission from issuing a decision on that permit application. The commission may return any petition received thereafter to the petitioner with a statement why the commission cannot consider the petition.
 8. ~~Within three weeks after the determination that a petition is complete, the~~ The commission will promptly notify the public of receipt of a petition by an advertisement in the local newspaper and the newspaper of broadest circulation in the region of the petitioned area. The commission ~~shall~~ will circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, and other persons known to the commission to have an interest in the property.
 9. Within three weeks after the determination that a petition is complete, the commission ~~shall~~ will notify the general public of ~~the its~~ receipt of the petition and request submissions of relevant information by ~~through~~ a newspaper advertisement placed once a week for two consecutive weeks in the official newspaper of each county ~~wherein~~ containing the ~~affected~~ petitioned area ~~lies~~ and in other daily newspapers of general circulation in the locality of the area covered by the petition.
 10. Until three days before the commission holds a hearing under section 69-05.2-04-05, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address, and telephone number.
 11. Beginning immediately after a complete petition is filed, the commission ~~shall~~ will compile and maintain a record consisting of all documents relating to the petition filed with or

prepared by the commission. The commission ~~shall~~ will make the record available in its offices for public inspection free of charge, and copying, at a reasonable cost, during ~~all~~ normal business hours ~~in the offices of the commission~~. The commission ~~shall~~ will also file a copy of the complete petition and copies of all other documents relating to the petition with the relevant county auditor of each county wherein the affected area lies ~~auditors~~.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04, 38-14.1-06, 38-14.1-09, 38-14.1-18

69-05.2-04-05. Areas unsuitable for mining - Hearing requirements for designating lands unsuitable.

1. Within ten months after receipt of a complete petition, the commission ~~shall~~ will hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held prior to the ~~commission making a~~ commission's decision. If a hearing is held, the commission ~~shall~~ will make a ~~verbatim transcript of the hearing~~ record.
2. Not less than thirty days before the ~~scheduled date of the hearing~~, the commission ~~shall~~ will give notice by certified mail of the date, time, and location of the hearing to:
 - a. Local, state, and federal agencies which may have an interest in the decision ~~on the petition~~.
 - b. The petitioner and ~~the~~ intervenors.
 - c. Any person with an ownership or other interest known to the commission in the area covered by the petition.
3. The last publication of the notice of hearing required by subsection 3 of North Dakota Century Code section 38-14.1-06 must occur ~~during the week immediately~~ no more than seven days before the hearing.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04, 38-14.1-05, 38-14.1-06

69-05.2-04-06. Areas unsuitable for mining - Commission decision for designating lands unsuitable.

1. In reaching its decision, the commission ~~shall~~ will use:

- a. The information contained in the data base and inventory system.
 - b. Information provided by other governmental agencies.
 - c. The detailed statement prepared under subsection 3 of North Dakota Century Code section 38-14.1-05.
 - d. Any other relevant information submitted during the comment period.
2. ~~A~~ The commission will issue a final written decision ~~shall be issued by the commission,~~ including a statement of reasons, within sixty days of completion of the public hearing, or, if no public hearing is held, ~~then~~ within twelve months after receipt of the complete petition. The commission ~~shall simultaneously send~~ will serve the decision by certified mail ~~to~~ on the petitioner, ~~every~~ every other party ~~parties~~ to the proceeding, and ~~to the regional director of the office of surface mining reclamation and enforcement of the United States department of the interior.~~
 3. The decision of the commission ~~with respect to~~ on a petition, or the failure of the commission to act within the time limits set forth in this section, ~~shall be~~ is subject to ~~judicial~~ review ~~in accordance with~~ under North Dakota Century Code section 38-14.1-35.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04, 38-14.1-35

69-05.2-04-07. Areas unsuitable for mining - Data base and inventory system for designating lands unsuitable.

1. The commission ~~shall~~ will develop a data base and inventory system ~~which will permit evaluation of whether~~ to evaluate if reclamation is feasible in areas covered by petitions.
2. The commission ~~shall~~ will include in the system information relevant to the criteria in North Dakota Century Code section 38-14.1-05 from appropriate state and federal agencies.
3. The commission ~~shall~~ will add to the data base and inventory system information:
 - a. On potential coal resources of the state, demand for those resources, the environment, the economy, and the supply of coal, sufficient to enable the commission to prepare the statements required by subsection 3 of section 69-05.2-04-05; and

- b. That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

69-05.2-04-08. Areas unsuitable for mining - Public information for designating lands unsuitable. The commission ~~shall~~ will:

1. Make the information and data base system developed under section 69-05.2-04-07 available to the public for inspection free of charge, and for copying at reasonable cost.
2. Provide information to the public on the petition procedures necessary to have an area designated ~~as~~ unsuitable ~~for all or certain types of surface coal mining operations~~ or to have designations terminated and describe how the inventory and data base system can be used.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

69-05.2-04-09. Areas unsuitable for mining - Commission responsibility for implementation for designating lands unsuitable. The commission will:

1. ~~The commission shall not~~ Not issue permits which are inconsistent with designations made ~~pursuant to~~ under North Dakota Century Code chapter 38-14.1 and this article.
2. ~~The commission shall maintain~~ Maintain a map of areas designated as unsuitable for all or certain types of ~~surface coal~~ mining operations.
3. ~~The commission shall make~~ Make available to any person ~~any~~ information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment, but excepting proprietary information on the chemical and physical properties of the coal ~~in accordance with~~ according to subsection 3 of North Dakota Century Code section 38-14.1-13.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04

69-05.2-05-01. Permit application filing - Completeness review - Review period.

1. General.

- a. Each operator or permittee who conducts or expects to conduct surface coal mining and reclamation operations shall file a complete permit application for a permit. For purposes of North Dakota Century Code section 38-14.1-18, the time of filing an application for a permit means the date on which the commission notifies the permit applicant that the application is complete.
- b. Each permit applicant shall submit four copies of the complete permit application and all required materials to the commission, except when federal lands are in the proposed permit area. When federal lands are in the proposed permit area, three copies shall be submitted to the commission and additional copies shall be, as required, submitted to the office of surface mining reclamation and enforcement, United States department of interior, as required by that office. Each permit applicant shall also submit additional copies or portions of copies to the commission as determined necessary by the commission for review by the reclamation advisory committee review.

2. Permit application completeness Completeness review. The commission shall review each permit application and will determine whether the application is complete and acceptable for further review. The commission shall will notify the permit applicant in writing, within thirty days after the application is filed, as to whether the permit application is complete and whether public notice required by North Dakota Century Code section 38-14.1-18 may be initiated or shall specify deficiencies which the permit applicant must correct be corrected in order to make the application complete and acceptable for further review. The thirty-day completeness review period shall be is counted as a part of the one hundred twenty-day review period specified in subsection 3 of this section. If the permit application is substantially deficient, the application shall it will be rejected and returned to the permit applicant.

3. Permit application review Review period. The commission shall will have one hundred twenty days after the filing date to review and approve or disapprove the application and notify the permit applicant of the commission's action on each permit application decision.

- a. The one hundred twenty-day review period shall begin the day after submission of the permit application to the commission.

- b. The ~~one hundred twenty-day~~ review period ~~shall will~~ be suspended during the period from the permit applicant's receipt of the commission's request for correction of application deficiencies in accordance with the completeness review procedures specified in subsection 2 or for other substantive information requested by the commission as the permit application review progresses, and shall remain suspended until the commission receives the permit applicant's subsequent response application deficiencies are corrected. The commission ~~shall will~~ advise the permit applicant, in writing, of its decision to suspend the ~~one hundred twenty-day~~ review period and shall specify the reason or, reasons for the suspension, the number of days remaining in the review period, and what measures must be undertaken by the permit applicant done for the review period to be continued continue.
- c. b. The commission ~~shall will~~ not issue a decision on a permit application if an informal conference or formal hearing has been requested or scheduled in accordance with the procedure of under chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-30, and such those proceedings cannot be conducted and a decision issued within the ~~scheduled one hundred twenty-day~~ normal review period.
4. Extension of permit application review period. The commission may extend the review period not to exceed an additional one hundred twenty days if:
- a. The commission requires additional time to conduct an informal conference or a formal hearing or complete the decision process pursuant to such proceedings as provided by under chapter 69-05.2-10 and North Dakota Century Code section 38-14.1-30.
- b. A significant amendment to a previously filed permit application is Significant changes are submitted that in the commission's judgment of the commission requires require additional time to review beyond the original one hundred twenty-day period. If necessary, the. The commission may require additional public notification and advisory committee review of the amended permit application in accordance with under chapter 69-05.2-10.
5. Review period. ~~Reapplication for a permit under approved state program. For all permit applications containing lands covered under an existing surface coal mining and reclamation operations permit that are submitted to the commission for reapplication under the approved state program in accordance with the requirements of section 69-05.2-05-05, the commission shall have one hundred eighty days to review and approve or~~

~~disapprove such application in lieu of the one hundred twenty-day review schedule specified by subsection 3.~~

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-10, 38-14.1-20, 38-14.1-21

69-05.2-05-02. Permit applications - General requirements for format and contents.

1. Applications for mining permits to conduct surface coal mining and reclamation operations shall must be filed in the format required by the commission. Information set forth in the permit application shall be The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission.
2. All technical analyses must be planned by or under the direction of an individual qualified in that subject, and data submitted in the permit application shall be accompanied by:
 - a. Names of persons or organizations which that collected and analyzed such the data.
 - b. Dates of ~~the~~ collection and analyses.
 - c. Descriptions of methodology used to collect and analyze the data.
3. The permit application shall state must provide the name, address, and position of officials of each private or academic research organization or governmental agency consulted by the permit applicant in preparation of the application for preparing information on land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.
4. The commission may, from time to time, alter the format of the application forms for mining permits, revisions, renewals, bonds, and operation and reclamation plans, and add to or delete from the information required for such forms and plans, consistent with the purposes of North Dakota Century Code chapter 38-14.1 and this article. Operators shall will be given reasonable advance notice of any such changes.
5. Maps and plans - general requirements.
 - a. Maps submitted with permit applications shall must be presented in a consolidated format, to the extent

possible, and, when. When appropriate, shall include all the types of information that are set forth found on 1:24,000 scale United States geological survey topographic maps of the United States geological survey of 1:24,000 scale series. Maps of the permit must be included. Permit area shall map scales must be at a scale of 1:4,800 or larger. Maps submitted to depict adjacent and general areas shall clearly show the showing lands and water within those in adjacent areas and must be in at a scale approved by the commission but in no event smaller than 1:24,000.

- b. Change in map scales. The map scales called for in this article may be changed at the request of the permit applicant if such change is deemed proper by the commission. The commission may approve requests for map scale changes.
- c. Each permit application filed with the commission for the purpose of requesting a new permit under North Dakota's approved state program in accordance with section 69-05.2-05-05 shall contain maps which clearly distinguish among each portion of the extended mining plan where surface coal mining operations were or will be conducted according to the following categories:
 - (1) Prior to May 3, 1978.
 - (2) After May 3, 1978, and prior to July 1, 1979.
 - (3) After July 1, 1979, and prior to the estimated date of issuance of the initial permit under the approved state program.
 - (4) After the estimated date of issuance of the initial permit under the approved state program.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-11, 38-14.1-13, 38-14.1-14, 38-14.1-15

69-05.2-05-04. Permit applications - Verification. Applications for permits and permit revisions shall be verified under oath, by the permit applicant or an authorized representative of the permit applicant, that the information contained in the application is true and correct to the best of the applicant's or representative's information and belief. Permit and revision applications must be verified by the applicant or an authorized representative of the applicant.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-13, 38-14.1-14

69-05.2-05-05. Permit applications - Reapplication for permit under approved state program.

1. All permittees who expect to continue to conduct surface coal mining operations on lands within existing permit boundaries after the expiration of eight months from the approval of the state program shall reapply for a new permit for such lands with the commission in accordance with the requirements of North Dakota Century Code section ~~38-14.1-11~~ and this article. Such application shall be prepared to cover those lands for which a permit to conduct surface coal mining and reclamation operations was previously issued by the commission and shall include:
 - a. Permit areas from which coal has not been removed but will be surface mined after the expiration of eight months from the approval of the state program.
 - b. Permit areas which are or will be utilized by surface coal mining and reclamation operations incidental to the extraction of the coal from those lands being surface mined after the expiration of eight months from the approval of the state program.
2. A permittee or operator conducting surface coal mining operations under a permit issued by the commission prior to the approval of the state program may conduct these previously approved operations beyond the period for reapplication for a new permit under the approved state program as prescribed in North Dakota Century Code section ~~38-14.1-11~~ and this section, if:
 - a. Timely and complete application for a permit under the state program has been made to the commission in accordance with the provisions of North Dakota Century Code chapter ~~38-14.1~~ and this article;
 - b. The commission has not yet rendered an initial decision with respect to such permit application; and
 - c. The operations are conducted in compliance with all terms and conditions of the existing permit, the requirements of North Dakota Century Code chapter ~~38-14.1~~, and this article.

History: Effective August 1, 1980.

General Authority: NDCC ~~38-14.1-03~~

Law Implemented: NDCC ~~38-14.1-10, 38-14.1-11~~

Repealed effective May 1, 1990.

69-05.2-05-06. Permit applications - Coordination with requirements under other laws. The commission ~~shall~~ will, to avoid duplication, coordinate permit review and issuance of permits for surface coal mining and reclamation operations with:

1. Any other applicable state permit process ~~applicable to the proposed operations~~, including, at a minimum, permits required under the:
 - a. Air Pollution Control Act (North Dakota Century Code chapter 23-25).
 - b. Solid Waste Management and Land Protection Act (North Dakota Century Code chapter 23-29).
 - c. Control, prevention, and abatement of pollution of surface waters (North Dakota Century Code chapter 61-28).
 - d. State engineer (North Dakota Century Code chapter 61-03).
2. The appropriate state and federal agencies who administer other applicable natural resource and environmental protection acts.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-42

69-05.2-05-07. Permit applications - Permit area determination - Porcelanite, sand, and gravel borrow pits. In determining whether porcelanite (scoria), sand, and gravel borrow pits may be excluded from the surface coal mining and reclamation operations permit area where ~~such~~ the pits are located on lands near ~~areas upon which surface~~ mining activities occur, the commission may consider the following factors, including, ~~but not limited to~~:

1. Proximity of the pits to the surface coal mining and reclamation operations.
2. ~~If the pits are adjacent to the surface coal mining operation,~~ The acreage [hectarage] affected by the pits and the impact of the pits adjacent to the mining operation upon land, air, or water resources.
3. Degree of dependency of the surface coal mining operation on the pits.
4. Degree of control over the operation of the pits by the permittee or operator.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-05-08. Permit applications - Permit term.

1. A permit to conduct surface coal mining and reclamation operations ~~shall~~ will be issued for a fixed term not to exceed five years. The permit area shall be no larger than the area which can be considered a logical pit sequence and ~~shall~~ also include those lands upon which surface mining used for activities incidental to the coal extraction of coal occur during the permit term. The coal removal area within the permit area shall be a permit subarea which is no larger than the area from which the permit applicant will remove coal during the permit term. Additional subareas of the permit area shall be approved for coal removal only by. Coal removal boundaries cannot go beyond those approved for the permit term without obtaining a permit revision pursuant to under section 69-05.2-11-02.
2. Upon expiration of the permit term, all lands within the permit area Permitted acreage where surface coal mining and reclamation operations are not complete shall be successively renewed in accordance with the permit renewal requirements of under section 69-05.2-11-03 until the final performance bond release criteria of ~~section 69-05.2-12-11~~ have been met.
3. A permit term for a fixed period greater than five years may be approved if:
 - a. The permit applicant ~~demonstrates that~~ needs a specified longer term and a larger permit area ~~are needed to give the permit applicant~~ make the ability to remove enough coal and to carry out activities incidental to coal removal so that showing necessary to obtain financing for equipment and the opening of the operation can be obtained, and this need is verified, in writing, by the permit applicant's proposed financing source for the financing; and
 - b. The permit application is accurate and complete for the specified longer term.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-12

69-05.2-06-01. Permit applications - Identification of interests. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each permit application shall must contain the following:

1. The names and addresses of the owner of record of ~~all~~ surface ~~areas~~ and coal subsurface rights contiguous to ~~any part of the~~ ~~proposed~~ permit area extending to a ~~distance of~~ one-fourth mile [402.33 meters] from the ~~proposed~~ permit boundary.
2. The ~~mine name of the proposed mine~~ and the mine safety and health administration identification number ~~for the mine~~.
3. A statement of all lands, interests in lands, options, or pending bids on interests held or made by the ~~permit~~ applicant for lands ~~which are~~ contiguous to the ~~permit area to be covered by the permit~~ extending to a ~~distance of~~ one-fourth mile [402.33 meters] from the ~~proposed~~ permit boundary.

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

69-05.2-06-02. Permit applications - Compliance information. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each ~~permit~~ application ~~shall~~ must contain:

1. A statement of any current or previous coal mining permits in any state held ~~by the permit applicant~~ during the five years ~~preceding the date of the~~ prior to application and by any person identified in paragraph 3 of subdivision e of subsection 1 of North Dakota Century Code section 38-14.1-14, and of any pending ~~permit~~ application to conduct ~~surface coal mining~~ operations in any state. The information ~~shall~~ must be listed by permit and ~~each~~ pending ~~permit~~ application number for each of those ~~coal mining operations~~.
2. The explanation required by subdivision h of subsection 1 of North Dakota Century Code section 38-14.1-14 ~~shall include~~ including:
 - a. Identification number and permit issue date of ~~issuance of the permit~~ or date and amount of bond or similar security.
 - b. Identification of the authority that suspended or revoked a permit or forfeited a bond and the ~~stated~~ reasons for that action.
 - c. The current status of the permit, bond, or ~~similar security~~ involved.
 - d. The date, location, and type, and current status of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.

e. ~~The current status of these proceedings.~~

3. The statement regarding each violation notice listed under subdivision g of subsection 1 of North Dakota Century Code section 38-14.1-14 ~~shall include~~ including those received by the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant and:
 - a. The date of issuance and identity of the issuing ~~regulatory~~ authority, department, or agency.
 - b. A brief description of the ~~particular~~ violation alleged ~~in the notice.~~
 - c. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, ~~but not limited to,~~ proceedings initiated by the applicant to obtain administrative or judicial review ~~of the violations.~~
 - d. The current status of the proceedings and ~~of the~~ violation notice.
 - e. ~~The~~ Any actions, ~~if any,~~ taken by the ~~permit~~ applicant to abate the violation.
 - f. ~~The~~ Any final resolution of each ~~violation~~ notice, ~~if any.~~

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-06-03. Permit applications - Right of entry and operation information. In addition to ~~the requirements of~~ satisfying subdivision k of subsection 1 of North Dakota Century Code section 38-14.1-14, the ~~permit~~ application ~~shall~~ must also contain a narrative and supporting certified copies of the appropriate documents which demonstrate that the ~~permit~~ applicant has complied with ~~the requirements of the Surface Owner Protection Act,~~ North Dakota Century Code ~~chapter 38-18~~ section 38-18-06.

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

69-05.2-06-04. Permit applications - Identification of other licenses and permits. Each ~~permit~~ application ~~shall~~ must contain a list of all other licenses and permits needed ~~by the permit applicant to~~

conduct ~~the proposed surface~~ mining activities. This list shall and identify each license and permit by:

1. Type of ~~permit or license~~.
2. Name and address of issuing authority.
3. Identification numbers of ~~applications for those permits or licenses~~ permit or license applications or, if issued, the permit or license identification numbers of the ~~permits or licenses~~.
4. If a decision has been made, the date of approval or disapproval by each issuing authority.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-06-05. Permit applications - Relationship to areas designated unsuitable for mining.

1. Each ~~permit~~ application shall must contain a statement of available information on whether the ~~proposed~~ permit area is within an area designated unsuitable for ~~surface~~ mining ~~activities~~ under North Dakota Century Code section 38-14.1-05 and chapter 69-05.2-04 or under study for designation in an administrative proceeding.
2. If a ~~permit applicant claims~~ claiming the exemption in subdivision d of subsection 3 of North Dakota Century Code section 38-14.1-21, the ~~permit application applicant~~ shall contain provide information supporting the ~~permit applicant's~~ assertion that it made of substantial legal and financial commitments made before January 4, 1977; ~~concerning the proposed surface mining activities.~~

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-05, 38-14.1-14, 38-14.1-21

69-05.2-07-01. Permit applications - Extended mining plan - General requirements. Each ~~permit~~ application shall must contain an extended mining plan identifying the lands subject to surface coal mining ~~operations~~ over the estimated life of the ~~surface coal mining~~ operation. Extended mining plans ~~submitted for a surface coal mining operation~~ must be complete, accurate, and updated annually in accordance with section 69-05.2-07-02.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-15

69-05.2-07-02. Permit applications - Extended mining plan - Amendment. The permittee shall annually advise the commission by ~~the twenty fifth day of January~~ twenty-fifth of the status of the extended mining plan and ~~shall~~ submit two copies of any plan amendments or additional data ~~for the plan~~.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-15

69-05.2-07-03. Permit applications - Extended mining plan - General map requirements. The permit applicant shall provide a 1:24,000 scale topographic map ~~as a part of the extended mining plan which shall be at a scale of 1:24,000 with an appropriate contour interval and must show the following~~ which shows:

1. The scale, date, location, company name, legal subdivision boundaries, an appropriate contour interval, and an appropriate legend.
2. The extended mining plan boundaries of the extended mining plan area and a legal description, to the nearest quarter section, of the lands enclosed by those boundaries within them.
3. The size, sequence, and timing of the subareas of the extended mining plan area for which it is anticipated that individual permits for mining will be requested over the estimated total life of the proposed surface extended mining activities plan.
4. The estimated crop lines and recovery lines within the extended mining plan area.

The ~~above~~ information may be contained shown on one map or on separate maps along with appropriate narratives where necessary.

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

69-05.2-08-01. Permit applications - Permit area - Environmental resources information.

1. Each permit application ~~shall, in accordance with the requirements of this chapter,~~ must include a description of

the premining environmental resources within of the proposed permit area and adjacent area areas that may be affected or impacted by the proposed surface mining activities.

2. When the proposed permit area contains a logical pit sequence where the coal removal area is larger than that needed for the initial five-year term of the permit, the permit applicant shall identify the size, sequence, and timing for which it is anticipated that of mining individual coal removal subareas will be mined.
3. The lands included Lands in the permit application shall must be described so that they may be identified and distinguished from other lands (by metes and bounds or standard government land survey descriptions). If government lots are included as a part of a government land survey description, such lots shall be described further by metes and bounds or standard government land survey descriptions, except that government lots must be described only by metes and bounds.
4. The permit application shall also identify, by delineation on must contain a 1:24,000 planimetric map, the following information 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.

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. The permit application shall must include a 1:4,800 planimetric mine map, together with as many separate detail maps as necessary, to depict the following information regarding the proposed permit area show:

1. All Land boundaries of lands and names of present surface and subsurface owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area and contiguous lands extending to a distance of one-fourth mile [402.23 meters] from the proposed permit boundary.
2. The scale, date, location, company name, legal subdivision boundaries, and an appropriate legend.
3. The delineation of the exact area being considered for permit.

4. The locations and elevations of drill holes used for collecting geologic, ground water, and overburden information.
5. The location and current use of all buildings on and within one-half mile [804.67 meters] of the ~~proposed~~ permit area, with identification of the current use of the buildings.
6. The location of surface and subsurface manmade features within, passing through, or passing over the ~~proposed~~ permit area, including, but not limited to, major electric transmission lines, pipelines, agricultural drainage tile fields, wells, roads, highways, and railroads.
7. Each public road ~~located~~ in or within one hundred feet [30.48 meters] of the ~~proposed~~ permit area.
8. Each public or private cemetery or Indian burial ground ~~located~~ in or within one hundred feet [30.48 meters] of the ~~proposed~~ permit area.
9. Elevations and locations of monitoring stations used to gather environmental resource data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the permit application.
10. Location and extent of known workings of underground mines, including mine openings to the surface within the ~~proposed~~ permit area and adjacent areas.
11. Location and extent of existing or previously surface-mined areas within the ~~proposed~~ permit and adjacent area.
12. Location and dimensions of existing areas of spoil, waste, coal and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the ~~proposed~~ permit area.
13. Location, and depth if available, of gas and oil wells within the ~~proposed~~ permit area.
14. The boundaries of any public park within or adjacent to the permit area.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-04. Permit applications - Permit area - Description of hydrology and geology - General requirements.

1. Each permit application shall contain a description of must describe the geology, hydrology, and water quality and

quantity of ~~all lands within the proposed permit area, the~~ and adjacent ~~area, and the general~~ area. The description ~~shall~~ must include information on the characteristics of all surface and ground waters within the ~~general area permit and adjacent~~ areas, and any water which will flow into or receive discharges of water from the ~~general area~~ these areas. The permit ~~shall~~ will not be approved by the commission until this information is ~~made available~~ in the permit application.

2. The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information shall be required for each site as when models are not used. All water quality sampling and analyses must be conducted according to the most recent edition of Standard Methods for the Examination of Water and Wastewater or those in 40 CFR parts 136 and 434 or other methods approved by the commission and the office of surface mining reclamation and enforcement.
3. Enough detailed geologic information must be included to determine:
 - a. The probable hydrologic consequences (PHC) of the operation on the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface and ground water monitoring is necessary;
 - b. All potentially toxic-forming strata down through the lowest coal seam to be mined; and
 - c. Whether reclamation can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.
4. The applicant shall determine the probable hydrologic consequences of the operation on the quality and quantity of surface and ground water under seasonal flow conditions for the permit and adjacent areas. The probable hydrologic consequences determination must be based on baseline hydrologic, geologic, and other information collected for the application and, if appropriate, data statistically representative of the site. Include findings on:
 - a. Whether adverse impacts occur to the hydrologic balance.
 - b. Whether toxic-forming materials are present that could contaminate surface and ground water supplies.
 - c. Whether the operation may contaminate, diminish, or interrupt an underground or surface water source within the permit or adjacent areas used for domestic, agricultural, industrial, or other legitimate purpose.

- d. What impact the operation will have on:
- (1) Sediment yield from the disturbed area.
 - (2) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact.
 - (3) Flooding or streamflow alteration.
 - (4) Ground water and surface water availability and other characteristics as required by the commission.
5. The applicant shall provide supplemental information to evaluate the hydrologic consequences based on drilling, aquifer tests, geohydrologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics if:
- a. Toxic-forming material is present; or
 - b. The probable hydrologic consequences determination indicates adverse impacts on or off the permit area may occur to the hydrologic balance.
6. The applicant shall provide information on the availability and suitability of alternate water sources for existing premining and approved postmining land uses if the probable hydrologic consequences determination shows the mining operation may contaminate, diminish, or interrupt a water source used for domestic or other legitimate purpose in the permit or adjacent areas.
7. Modeling techniques may be used if they furnish the required information.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-15

69-05.2-08-05. Permit applications - Permit area - Geology description.

1. The description ~~shall~~ must include a general statement of the geology within the ~~proposed~~ permit area down to and including through the first aquifer to be affected below the lowest coal seam to be mined deeper of either the stratum immediately below the deepest coal seam to be mined or any lower aquifer which may be adversely affected by mining.
2. Test borings or core samples from the ~~proposed~~ permit area ~~shall~~ must be collected and analyzed down to and including the

stratum immediately below the lowest coal seam to be mined. The minimum density ~~shall be~~ is one drill hole per forty acres [16.19 hectares] or a comparable spacing, or as ~~otherwise~~ specified by the commission. Overburden samples ~~are to~~ must be taken at five-foot [1.52-meter] intervals and ~~are to be~~ taken dry whenever possible. ~~Both dry and wet samples can be used for analysis.~~ Laboratory analyses ~~shall~~ must be made by the methods ~~outlined~~ in United States department of agriculture handbook 525, Laboratory Methods Recommended for Chemical Analyses of Mined Land Spoils and Overburden in Western United States, by Sandoval and Power, or United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, both available from the United States government printing office, Washington, D. C. The following information ~~shall~~ must be provided:

- a. Location of subsurface water, ~~if~~ encountered.
- b. ~~Logs of drill holes~~ Drill hole logs with gamma ray and density logs included as verification showing the lithologic characteristics and thickness of each stratum and ~~each~~ coal seam.
- c. Physical and chemical analyses of each overburden sample taken at five-foot [1.52-meter] intervals within the overburden and the stratum immediately below the lowest coal seam to be mined to identify, at a minimum, those horizons ~~which contain~~ containing potential toxic-forming materials. The analyses ~~shall~~ must include:
 - (1) pH.
 - (2) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).
 - (3) Electrical conductivity of the saturation extract.
 - (4) Texture (by pipette or hydrometer method). Include percentage ~~breakdown~~ of sand, silt, and clay along with a general description of the physical properties of each stratum within the overburden.
 - (5) Saturation percentage if the sodium adsorption ratio is greater than twelve and less than twenty.
- d. ~~Analyses of the coal seam,~~ Coal seam analyses including, but not limited to, an analysis of the sodium, ash, British thermal unit, and sulfur, and iron sulfide content.
- e. Cross sections sufficient to ~~depict~~ show the major subsurface variations within the permit area down to the

stratum immediately below the lowest coal seam to be mined. The horizontal scale shall be 1:4,800 and the vertical scale ~~shall be~~ one inch [2.54 centimeters] equals twenty feet [6.10 meters]. To assess ~~the pit~~ suitability ~~of a pit selected~~ for disposal of refuse, ash, and other residue from coal utilization processes, the information presented in this subsection ~~shall~~ must extend to a depth ~~to be~~ determined by the commission or to the base of the next confining clay stratum ~~occurring~~ beneath the lowest coal seam of coal to be mined.

- f. A thickness (isopach) map of the overburden to the top of the deepest seam to be mined. The contour interval ~~shall~~ must be ten feet [3.05 meters] and the horizontal scale ~~shall be~~ 1:4,800.
 - g. All coal crop lines and the strike and dip of the coal to be mined ~~within the proposed permit area~~.
3. If required by the commission, the applicant shall collect and analyze test borings or core samplings shall be collected and analyzed to greater depths within ~~the proposed permit area~~, or ~~for areas~~ outside the proposed permit area ~~to provide for evaluation of if needed for evaluating~~ the impact of ~~the proposed activities mining~~ on the hydrologic balance.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-06. Permit applications - Permit area - Ground water information.

- 1. ~~Because water supplies may be affected several miles [kilometers] beyond the mined area, it is necessary to develop an analysis of~~ The applicant shall analyze the ground water hydrology and ground water resources of the potentially affected area ~~prior to mining~~. The permit application ~~shall~~ must contain a description of the ground water hydrology for the ~~proposed permit area, and adjacent area, and general area areas~~ including:
 - a. A general account of the ground water hydrology (the water resources of the area).
 - b. Known uses of the water in the aquifers and water table and location of all water wells within the ~~proposed permit area, and adjacent area, and general area areas~~.
 - c. Sufficient information and narratives to adequately describe the recharge, storage, and discharge

characteristics of aquifers and the quality and quantity of ground water according to the parameters and in the detail required by the commission. The narrative ~~shall include a discussion of~~ must discuss the ground water aquifers and hydrologic functions that ~~are to be~~ addressed in the operations and reclamation plan ground water monitoring plan required by section 69-05.2-09-12 in order to comply with the performance standards of sections 69-05.2-16-13 through 69-05.2-16-15.

- d. Contour maps or maps showing the water table or piezometric surface ~~of the water~~ in each aquifer (including water-bearing coal seams) down to ~~the next local aquifer beneath and including~~ the lowest water-bearing coal seam to be mined and any lower aquifer which may be adversely affected by mining. ~~These maps shall be prepared~~ The applicant shall prepare 1:24,000 scale maps covering the permit and adjacent areas, using a minimum of at least one data point (a piezometer nest) per four square miles [6.44 square kilometers], unless the commission requires a greater density is required by the commission. ~~The locations of data~~ Data points shall ~~must~~ be shown on the map and given to the nearest ten acres [4.05 hectares]. ~~The scale of the map shall be 1:24,000.~~ Data accompanying the map or maps ~~Accompanying data~~ should include ~~the~~ lithologic and geophysical (gamma ray and density) logs of the piezometer holes in which piezometers are installed, piezometer construction details, and elevations of the water level and land surface elevations to the accuracy necessary for valid analysis of the ground water hydrology of the permit area and the general area adjacent areas. ~~The area covered by the map or maps shall be the permit area, adjacent area, and the general area.~~
- e. Water Results of water samples shall be collected from each of the data points for chemical analyses point, if possible. ~~The analyses shall include, analyzed for:~~
- (1) Total dissolved solids in milligrams per liter.
 - (2) Hardness in milligrams per liter.
 - (3) Sodium in milligrams per liter.
 - (4) Iron, bicarbonate, nitrate, sulfate, and chloride in milligrams per liter.
 - (5) ~~Bicarbonate in milligrams per liter.~~
 - (6) ~~Nitrate in milligrams per liter.~~
 - (7) ~~Sulfate in milligrams per liter.~~

- ~~(8)~~ Chloride in milligrams per liter.
 - ~~(9)~~ pH in standard units.
 - ~~(10)~~ (6) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).
 - ~~(11)~~ (7) Electrical conductivity in micro mhos per centimeter.
 - ~~(12)~~ (8) Additional parameters which may be required by the commission on a site-specific basis.
2. If the proposed permit area contains or is adjacent to an identified alluvial valley floor, the applicant shall provide additional ground water information required by subsections 5 and 6 of section 69-05.2-08-04.
 3. The applicant shall meet the alluvial valley floor ground water information and data requirements for alluvial valley floors shall be met if the permit area contains or is adjacent to an identified alluvial valley floor.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-07. Permit applications - Permit area - Surface water information.

1. Surface water information shall be described and identified on an appropriate scale map, including the names and locations of watersheds which will receive water discharges and the location and classification of all streams within the permit area, and general area, as ephemeral, intermittent, or perennial. The description shall also include the location of all surface water bodies such as lakes, ponds, and springs, constructed or natural drains, the location of any water discharge into any surface body of water, and the locations of water supply intakes for current users of surface water flowing into, out of, and within the proposed permit area and general area. Descriptions of surface drainage systems shall be included in sufficient detail to identify the seasonal variations in water quantity and quality within the proposed permit area, adjacent areas, and general areas. The applicant shall provide a map for the permit and adjacent areas showing:
 - a. Names and locations of watersheds receiving mine water discharges.
 - b. Ephemeral, intermittent, and perennial streams.

- c. Lakes, ponds, wetlands, springs, drains, and water discharges into surface water bodies.
 - d. Water supply intakes for current surface water users.
2. The applicant shall describe surface drainage systems in sufficient detail to identify seasonal water quality and quantity variations in the permit and adjacent areas.
 3. Surface water information ~~shall~~ must include:
 - a. Minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge stream rates of streams sufficient to identify seasonal variations.
 - b. Water quality data to identify the characteristics of surface waters ~~in, discharging into, or which will receive flows from surface or ground water from affected areas within the proposed~~ related to the permit area, and adjacent areas, and general areas, sufficient to identify seasonal variations, showing. The data must include:
 - (1) Total dissolved solids in milligrams per liter.
 - (2) Total suspended solids in milligrams per liter.
 - (3) ~~Electrical conductivity in micro mhos per centimeter.~~
 - ~~(4)~~ pH in standard units.
 - ~~(5)~~ (4) Total iron in milligrams per liter.
 - ~~(6)~~ (5) Additional parameters ~~which the commission may be required by the commission~~ require on a site-specific basis.
 - c. A complete description of the monitoring procedures used ~~to acquire surface water data~~ including:
 - (1) ~~Location of all monitoring sites,~~ Site locations.
 - (2) ~~Frequency of monitoring~~ Monitoring frequency for each site, ~~and.~~
 - (3) ~~Monitoring techniques~~ Techniques and equipment utilized.
 4. If necessary, the applicant shall provide additional surface water information required by subsections 5 and 6 of section 69-05.2-08-04.

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

69-05.2-08-08. Permit applications - Permit area - Vegetation and land use information.

1. The ~~permit~~ application ~~shall~~ must contain the following premining vegetation information:
 - a. A map or aerial photograph at a scale of 1:4,800 that delineates the existing mapping units within each premining land use. The mapping units ~~used~~ for different land use categories are ~~as follows~~:
 - (1) For cropland, each ~~major soil type shall be considered a soil~~ mapping unit.
 - (2) For tame pastureland, each ~~major soil type shall be considered a soil~~ mapping unit.
 - (3) For native grasslands, each range site ~~shall be considered a mapping unit~~. The soil mapping unit in each range site must also be delineated.
 - (4) For woodland ~~and fish and wildlife habitat~~, each ~~plant community within each vegetative type shall be considered a mapping unit~~ woodland type, i.e., trees, tall shrubs, and low shrubs.
 - (5) For fish and wildlife habitat, each vegetation type as further specified in subparagraphs a, b, and c.
 - (a) For woodland, each woodland type, i.e., trees, tall shrubs, and low shrubs;
 - (b) For wetlands, wetland classes based on ecological differentiation as set forth in Classification of Natural Ponds and Lakes in the Glaciated Prairie Region (United States department of the interior (1971)) or other approved classification system.
 - (c) For grasslands (native or introduced), each soil mapping unit.
 - (6) For shelterbelts, the entire planting.
 - b. For each land use, a comprehensive species list of higher plants and identification of any species of rare, endangered, poisonous, or noxious plants, developed by a thorough reconnaissance of all mapping units.

- c. A description of each mapping unit delineated pursuant to under subdivision a. This description ~~shall~~ must include the following:
- (1) The acreage [hectarage] of each mapping unit for each surface owner within the permit area.
 - (2) A species list of higher plants and identification of any species of rare, endangered, poisonous, or noxious plants.
 - ~~(3)~~ A quantitative An assessment of, at a minimum, the following vegetation parameters: the productivity of cropland, tame pastureland, and native grassland based on published data, historic data, or quantitative data.
 - ~~(a)~~ Productivity on cropland.
 - ~~(b)~~ Productivity and ground cover on tame pastureland.
 - (3) (c) Productivity and ground cover by important plant species and groups, and United States department of agriculture soil conservation service range condition in percent on for native grassland.
 - ~~(d)~~ Density of trees, shrubs, and half shrubs and ground cover of herbaceous vegetation by important plant species and groups on woodland and fish and wildlife habitat.
 - (4) A detailed description of number and arrangement of trees and shrubs, probable age of trees, height of trees, and characteristics of understory vegetation for woodland and fish and wildlife habitat where woodland is the vegetation type.
 - (5) A detailed description of community structure, assemblages of plant species, water conditions, and size for fish and wildlife habitat where wetlands are the vegetation type.
 - (6) A description of number and arrangement of trees and shrubs, length and number of rows, and associated plant species for shelterbelts.
 - (7) When required for the proposed success standard, a quantitative assessment of applicable vegetation parameters using methods approved by the commission.
- e. d. A detailed narrative describing the nature and variability of the vegetation in each mapping unit and land use

category, based on a synthesis and summarization of the data obtained pursuant to this subsection. All data, analyses conducted on the data, and results shall be submitted as part of this discussion thorough reconnaissance and qualitative assessment.

2. When the methods selected pursuant to for subdivision f g of subsection 6 of section 69-05.2-09-11 require the use of reference areas, ~~the following requirements shall be met:~~
 - a. The number of reference areas proposed ~~shall~~ must be sufficient to adequately represent the permit area.
 - b. The location, approximate size, and boundaries of all proposed reference areas ~~shall~~ must be located on a map of sufficient scale to accurately show the field location of each reference area. The boundaries of the mapping unit in which the reference area is located ~~shall~~ must also be delineated.
 - c. The permittee shall demonstrate that the proposed reference areas adequately characterize the relevant mapping units which they propose to represent. This demonstration ~~shall~~ must be done according to methods approved by the commission.
3. ~~The commission may grant exception to parts of the map and vegetation data requirements of this section for operations where the extended mine plan is less than one hundred acres [40.5 hectares], if the permit applicant demonstrates to the commission that certain informational requirements of this section are not applicable on a site specific basis.~~
4. ~~The permit application shall~~ must contain, in addition to the requirements of materials satisfying subdivision a of subsection 2 of North Dakota Century Code section 38-14.1-14, the following:
 - a. A map and supporting narrative of the uses of the land existing at the time ~~of the filing of the permit application~~ is filed. If the premining use of the land was changed within five years before the anticipated date of beginning the proposed operations, the historic use ~~of the land shall~~ must also be described.
 - b. A narrative of land capability and productivity, which analyzes the land use description under subdivision a in conjunction with other environmental resources information required under this chapter.
5. ~~4.~~ The permit application ~~shall~~ must contain a narrative description which ~~shall include~~ includes information adequate to predict the potential for reestablishing vegetation on all

areas to be disturbed by surface coal mining and reclamation operations.

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, 38-14.1-24

69-05.2-08-09. Permit applications - Permit area - Prime farmland investigation and determination - Reconnaissance investigation.

- 1- The permit applicant shall conduct a preapplication investigation of the proposed permit area to determine whether lands within such areas may be prime farmland.
- 2- Land shall not be considered prime farmland where the permit applicant can demonstrate one of the following:
 - a- The land has not been historically used as cropland.
 - b- The slope of the land is ten percent or greater.
 - c- The land is not irrigated or naturally subirrigated, has no developed water supply that is dependable or of adequate quality, and the average annual precipitation is fourteen inches {35.56 centimeters} or less.
 - d- Other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season, more often than once in two years, and the flooding has reduced crop yields.
 - e- On the basis of a cooperative soil survey of lands within the proposed permit area, there are not any soil mapping units identified as prime farmland.
 - f- Following a review by the state conservationist, United States department of agriculture soil conservation service, of important farmland inventory maps published by the soil conservation service, or the cooperative soil survey if important farmland inventory maps are not available, a determination is made by the state conservationist that there are not any prime farmlands within the proposed permit area.

When an applicant demonstrates one of the above, a request for a negative determination based on that demonstration shall be submitted to the commission with the permit application.

- 3- If the investigation indicates that the proposed permit area may contain prime soils, the permit applicant shall contact the state conservationist of the United States soil

conservation service for a determination, in consultation with the commission, if any prime farmland exists in the proposed permit area based on important farmland inventory maps or a cooperative soil survey. If no cooperative soil survey has been made for the lands within the proposed permit area, the permit applicant shall cause such a survey to be made.

a. When the state conservationist of the United States soil conservation service identifies prime farmland within the proposed area to be mined, the permit applicant shall submit an application in accordance with section 69-05.2-09-15 for such designated land.

b. When the state conservationist of the United States soil conservation service does not identify any prime farmland within the proposed permit area, the permit applicant shall submit a request for negative determination in accordance with subsection 2.

1. All applications must include the results of a reconnaissance investigation of the proposed permit area to indicate whether prime farmland exists. The commission in consultation with the United States soil conservation service will determine the nature and extent of the required reconnaissance investigation.

2. If the reconnaissance investigation establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that no prime farmland is present. The statement must identify how the conclusion was reached.

3. If the reconnaissance investigation indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant shall determine if a cooperative soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no cooperative soil survey exists, the applicant shall have one made of the lands which the reconnaissance investigation indicates could be prime farmland.

a. If the cooperative soil survey indicates that no prime farmland soil mapping units are present within the permit area, subsection 2 applies.

b. If the cooperative soil survey indicates that prime farmland soil mapping units are present within the permit area, section 69-05.2-09-15 applies.

4. This section does not apply to lands which qualify for the exemption in section 69-05.2-26-06. However, the application must show that all exemption criteria are met.

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

69-05.2-08-10. Permit applications - Permit area - Soil resources information. ~~A~~ The applicant shall submit a soil survey ~~shall be submitted~~ for the ~~proposed permit area and shall consist~~ 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 ~~shall~~ must be made by ~~accepted principles and methods and submitted on a scale of~~ at a 1:4,800. ~~The map shall~~ scale and show the following:
 - 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 ~~should~~ is normally ~~be~~ made up of the dark-colored surface horizon materials.
 - 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 ~~by the state conservationist of the soil conservation service within the proposed permit area pursuant to~~ under section 69-05.2-08-09.
2. The report ~~shall~~ must contain the following:
 - a. The results of any chemical and physical analyses made to determine the properties of the suitable plant growth material. Textural analyses ~~shall~~ must be included for all samples taken.

- b. ~~The volume of suitable plant growth material (topsoil) in the permit area by ownership which is considered best for topdressing the area being reclaimed.~~
 - c. ~~The volume of the remaining suitable plant growth material (subsoil) in the permit area by ownership.~~
 - d. The description, classification, and interpretation for use of the soils and suitable plant growth material in the permit area.
3. Laboratory analyses ~~will~~ must be made by the methods and procedures ~~outlined~~ 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 ~~shall~~ 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.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-11. Permit applications - Permit area - Use of other suitable strata. Where the ~~permit~~ applicant proposes to use other suitable strata as a supplement for suitable plant growth materials or where the commission determines that it is necessary to meet the revegetation requirements, the application ~~shall~~ must indicate the areal extent of other suitable strata within the proposed permit area and ~~shall~~ must, on a sampling density determined by the commission in consultation with the ~~permit~~ applicant, provide results of the analyses, trials, and tests required under subsection ~~4~~ 5 of section 69-05.2-15-02.

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

69-05.2-08-12. Permit applications - Permit area - Topographic data. The applicant shall submit:

1. The permit applicant shall submit to the commission topographic maps with five-foot [~~1.52-meter~~] contour intervals which adequately represent the land surface configuration before mining. Five-foot [1.52-meter] contour interval topographic maps of the permit area.
2. An area slope map shall be submitted which reflects the geomorphic differences of the areas to be disturbed. The slope percentage categories shall be in showing three percent intervals, unless otherwise approved by the commission.

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

69-05.2-08-13. Permit applications - Permit area - Alluvial valley floor determination.

1. ~~Alluvial valley floor determination:~~

~~a.~~ Before applying for a permit to conduct surface coal mining and reclamation operations within a valley holding a stream or in a location where the adjacent area includes any stream, the permit applicant shall either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor, or submit to the commission the results of a field investigation of the permit area and adjacent area areas. The field investigations shall must include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation studies on areas required to be investigated by the commission, after consultation with the permit applicant, to enable the commission to make an evaluation regarding the existence of the probable alluvial valley floor in the permit area or adjacent area and to determine which areas, if any, require more detailed study in order to allow the commission to make a final determination regarding the existence of an alluvial valley floor. Studies performed during the investigation by the permit applicant or subsequent studies as required of the permit applicant by the commission, shall must include an appropriate combination, adapted to site-specific conditions, of:

↔ a. Mapping of the probable alluvial valley floor including, ~~but not limited to,~~ geologic maps of unconsolidated deposits, delineating the streamlaid deposits, maps of streams, delineation of surface watersheds and directions of shallow ground water flows through and into the unconsolidated deposits, topography showing local and regional terrace levels,

and topography of terraces, floodplains, and channels showing surface drainage patterns.

- ~~(2)~~ b. Mapping of all lands included in the area in accordance with this section and subject to used for agricultural activities, showing the area in which different types of agricultural lands, such as flood irrigated lands, pasturelands, and undeveloped rangelands exist and accompanied by measurements of vegetation in terms of productivity and type.
 - ~~(3)~~ c. Mapping Topographic maps of all lands that are currently or were historically flood irrigated, showing the location of each diversion structure, ditch, dam and related reservoir, irrigated land, and topography of those lands.
 - ~~(4)~~ d. Documentation that areas identified in this section are, or are not, subirrigated, based on ground water monitoring data, representative water quality, soil moisture measurements, and measurements of rooting depth, soil mottling, and water requirements of vegetation.
 - ~~(5)~~ e. Documentation, based on representative sampling, that areas identified under this subdivision are, or are not, flood irrigable, based on streamflow, water quality, water yield, soils measurements, and topographic characteristics.
 - ~~(6)~~ f. Analysis of a series of aerial photographs, including color infrared imagery flown at a time of year to show capable of showing any late summer and fall differences between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial valley floors.
- b- 2. Based on the investigations conducted under subdivision a subsection 1, the commission shall make a determination of will determine the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration as lying within an alluvial valley floor. The commission shall will determine that an alluvial valley floor exists if it finds that:
- ~~(1)~~ a. Unconsolidated streamlaid deposits holding streams are present; and
 - ~~(2)~~ b. There is sufficient water to support agricultural activities as evidenced shown by:

- ~~(a)~~ (1) The existence of flood irrigation in the area ~~in question~~ or its historical use; ~~or~~
- ~~(b)~~ (2) The capability ~~of an area~~ to be flood irrigated, based on streamflow water yield, soils, water quality, and topography; or
- ~~(c)~~ (3) Subirrigation of the lands ~~in question~~, derived from the ground water system of the valley floor.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21

69-05.2-08-14. Permit applications - Permit area - Alluvial valley floor resources.

1. If land within the ~~proposed~~ permit area or adjacent area is identified as an alluvial valley floor and ~~the proposed~~ mining operation may affect an alluvial valley floor it or waters that supply alluvial valley floors, the permit applicant shall submit a complete description of the alluvial valley floor resources and characteristics that ~~provide sufficient baseline data to~~ allow the commission to make a determination of determine:
 - a. The characteristics ~~of the alluvial valley floor~~ which are necessary to preserve ~~the~~ essential hydrologic functions during and after mining.
 - b. The significance of the area ~~to be affected~~ to agricultural activities.
 - c. Whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or ground waters that supply the alluvial valley floor.
 - d. The effectiveness of proposed reclamation ~~with respect to requirements of~~ under North Dakota Century Code chapter 38-14.1 and this article.
 - e. Specific environmental monitoring required to measure compliance with chapter 69-05.2-25 during and after mining and reclamation operations.
2. The alluvial valley floor baseline data required to make the determinations listed in ~~section subsection 1 shall~~ must include, ~~but not be limited to~~:

- a. Geologic data, including ~~geologic~~ structure, and surficial ~~geologic~~ maps, and ~~geologic~~ cross sections.
 - b. Soils and vegetation data, including a detailed soil survey and chemical and physical analyses ~~of soils~~, a vegetation map and narrative descriptions of quantitative and qualitative surveys, and land use data, including an evaluation of crop yields.
 - c. Surveys and data ~~required under this section~~ for areas designated as alluvial valley floors because of their flood irrigation characteristics ~~shall~~ must also include, ~~at a minimum, surface hydrologic data, including~~ streamflow, runoff, sediment yield, and water quality analyses describing seasonal variations, field geomorphic surveys, and other geomorphic studies.
 - d. Surveys and data ~~required under this section~~ for areas designated as alluvial valley floors because of their subirrigation characteristics, ~~shall~~ must also include, ~~at a minimum,~~ geohydrologic data including observation well establishment for ~~purposes of~~ water level measurements, ground water contour maps, testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors, well and spring inventories, and water quality analyses describing seasonal variations, and of the same ~~overburden~~ parameters specified in section 69-05.2-08-05 ~~of overburden~~ to determine the effect of the ~~proposed mining and reclamation~~ operations on water quality and quantity.
 - e. Plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance, or preclusion of farming on the alluvial valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming and will not materially damage the quantity or quality of water in surface and ground water systems that supply these alluvial valley floors.
 - f. Maps showing farms that could be affected by the mining and, if any farm ~~includes~~ encompasses all or part of an alluvial valley floor, ~~or includes any portion thereof,~~ statements of the type and quantity of agricultural activity ~~performed~~ on the alluvial valley floor and its relationship to the farm's total agricultural activity including an economic analysis.
3. The surveys ~~required by this section~~ should identify those geologic, hydrologic, and biologic characteristics of the alluvial valley floor necessary to support ~~the~~ essential hydrologic functions ~~of an alluvial valley floor~~. Characteristics ~~which support the essential hydrologic~~

functions and which must be evaluated in a complete application include, but are not limited to:

a. Characteristics supporting the function of collecting water which include, but are not limited to:

- (1) The amount and rate of runoff and a water balance analysis, with respect to rainfall, evapotranspiration, infiltration, and ground water recharge.
- (2) The relief, slope, and density of the network of drainage channels.
- (3) The infiltration, permeability, porosity, and transmissivity of unconsolidated deposits of the valley floor that either constitute the aquifer associated with the stream or lie between the aquifer and the stream.
- (4) Other factors that affect the interchange of water between surface streams and ground water systems, including the depth to ground water, the direction of ground water flow, the extent to which the stream and associated alluvial ground water aquifers provide recharge to, or are recharged by bedrock aquifers.

b. Characteristics supporting the function of storing water which include, but are not limited to:

- (1) Surface roughness, slope, and vegetation of the channel, floodplain, and low terraces that retard the flow of surface waters.
- (2) Porosity, permeability, water-holding capacity, saturated thickness, and volume of aquifers associated with streams, including alluvial aquifers, perched aquifers, and other water-bearing zones found beneath valley floors.
- (3) Moisture held in soils or the plant growth medium within the alluvial valley floor, and the physical and chemical properties of the subsoil that provide for sustained vegetation growth or cover during extended periods of low precipitation.

c. Characteristics supporting the function of regulating the flow of water which include, but are not limited to:

- (1) The geometry and physical character of the valley, expressed in terms of the longitudinal profile and slope of the valley and the channel, the sinuosity of the channel, the cross section, slopes, and

proportions of the channels, floodplains, and low terraces, the nature and stability of the streambanks, and the vegetation established in the channels and along the streambanks and floodplains.

(2) The nature of surface flows as shown by the frequency and duration of flows of representative magnitude including low flows and floods.

(3) The nature of interchange of water between streams, their associated alluvial aquifers and any bedrock aquifers as shown by the rate and amount of water supplied by the stream to associated alluvial and bedrock aquifers (i.e., recharge) and by the rates and amounts of water supplied by aquifers to the stream (i.e., baseflow).

d. Characteristics which make water available and which include, ~~but are not limited to,~~ the presence of land forms including floodplains and terraces suitable for agricultural activities.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21

69-05.2-08-15. Permit applications - Permit area - Fish and wildlife resources.

1. Each ~~permit~~ application ~~shall~~ must contain a description of ~~the~~ fish and wildlife resources and their habitats on the ~~proposed~~ permit area and on adjacent areas where effects on ~~such~~ those resources may reasonably be expected to occur. The applicant shall base the description shall be based upon on fish and wildlife inventories of fish and wildlife and their habitats on the permit area and adjacent areas. The delineate habitats shall be delineated on 1:4,800 scale aerial photographs.

2. The ~~permit~~ applicant shall determine the scope of work, level of detail, and timetable for ~~completion of~~ completing fish and wildlife inventories in consultation with the commission and the state game and fish department and ~~shall~~ submit for approval by the commission a study plan by which for commission approval for acquiring fish and wildlife information will be acquired.

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, 38-14.1-24

69-05.2-09-01. Permit applications - Operation plans - General requirements. Each permit application shall must contain a detailed description of the mining operations proposed to be conducted during the term of the permit within the proposed permit area, including, at a minimum, the following the proposed mining operations, including:

1. A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total coal production of coal, by tonnage, and the major equipment to be used for all aspects of these operations.
2. A plan stating the anticipated or actual starting and termination date of each phase of the surface mining activities and the anticipated number of acres (hectares) amount of land to be affected for each phase of mining over the total life of the permit.
3. A narrative for each proposed operations plan required by this chapter explaining the plan in detail and the construction, modification, use, and maintenance of each mine facility, water and air pollution control facilities or structures, transportation and coal handling facilities, and other structures required for implementing the plans.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-02. Permit applications - Operation plans - Maps and plans. Each permit application shall must contain an appropriate combination of 1:4,800 scale topographic maps, planimetric maps, and plans of the proposed permit area and adjacent areas as follows showing:

1. The maps shall show the scale Scale, date, permit boundaries of the permit area, company name, legal subdivision boundaries, and an appropriate legend.
2. The maps and plans shall show the lands proposed Lands to be affected throughout the surface coal mining and reclamation operation and any change in a facility or feature to be caused by the proposed operations, if the existing facility or feature was shown under chapter 69-05.2-08.
3. The boundary boundaries of all areas proposed to be affected over the term of during the permit term according to the sequence of mining and reclamation operations with and a description of size and timing of operations for each coal removal subarea.
4. Pit layout and proposed sequence of mining operations, crop line, spoil placement areas, final graded spoil line, highwall

areas proposed to be backslotted, and areas proposed for stockpiling suitable plant growth material or other suitable strata.

5. Location of all proposed sedimentation ponds, other water diversion, collection, conveyance, treatment, storage and discharge facilities, surface water management structures and identification of permanent water impoundments or stream channel alignments.
6. Location of all coal processing waste dams and embankments in accordance with under section 69-05.2-09-09, and fill area areas for the disposal of initial cut spoil and other excess spoil in accordance with under section 69-05.2-09-14 and North Dakota Century Code section 38-14.1-24.
7. Buildings, utility corridors, proposed and existing haul roads, mine railways, and other support facilities used to support the surface coal mining and reclamation operation.
8. Each coal storage, cleaning and loading area, and each coal waste and noncoal waste storage area.
9. Each explosive storage and handling facility.
10. Each air pollution collection and control facility.
11. Each habitat area to be used to protect and enhance fish and wildlife and related environmental values.
12. Each source of waste and each waste disposal facility relating to coal processing or pollution control.
13. Each bond area of land within the permit area for which a performance bond or other equivalent guarantee will be posted under chapter 69-05.2-12, scheduled according to the proposed sequence of mining and reclamation operations. Include the bond or guarantee amount for each respective area.
14. Maps and plans required under subsections 5, 6, and 12 shall must be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a qualified registered land surveyor, or qualified professional geologist, with assistance from experts in related fields, except that. However, maps, plans, and cross sections submitted in accordance with according to section 69-05.2-09-09 may only be prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-03. Permit applications - Operation plans - Existing structures.

1. Each permit application shall must contain a description of each existing structure within in the proposed permit area or adjacent permit areas that are proposed to be used in connection with or to facilitate support the proposed surface coal mining and reclamation operation. The description shall must include:
 - a. Location.
 - b. Plans of the structure which describe its current Current condition.
 - c. Approximate beginning and ending construction dates on which construction of the existing structure was begun and completed.
 - d. A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards and design requirements of this article and of North Dakota Century Code section 38-14.1-24.
2. An existing The applicant shall modify or reconstruct a nonconforming structure which does not meet the performance standards of this article and North Dakota Century Code section ~~38-14.1-24~~ shall be modified or reconstructed to meet the design standards of this article after approval of the compliance plan required in subsection 3 by the commission as a part of the permit application approval process.
3. Each permit application shall must contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall and include:
 - a. Design specifications for the modification or reconstruction of the structure Specifications to meet the design and performance standards of this article and North Dakota Century Code section 38-14.1-24.
 - b. A construction schedule which shows showing dates for beginning and completing interim steps and final reconstruction.
 - c. Provisions for monitoring the structure during and after modification or reconstruction to ensure that the

performance standards of this article and North Dakota Century Code section 38-14.1-24 are met.

- d. A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.
4. An existing A structure which meets the performance standards of this article and North Dakota Century Code section 38-14.1-24 but does not meet the design requirements of this article may be exempted from meeting those design requirements by the commission. The commission shall may grant this exemption as part of the permit application process after obtaining the information required by this section and after making the finding required by section 69-05.2-10-04.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-04. Permit applications - Operation plans - Blasting. Each permit application shall must contain a blasting plan for the proposed permit area, explaining how the permit applicant intends to comply with the requirements of chapter 69-05.2-17 and subsection 4 of North Dakota Century Code section 38-14.1-14 and including the following:

1. Types and approximate amounts of explosives to be used for each type of blasting operation to be conducted. The plan must identify the maximum amount of explosives to be detonated within any eight millisecond period shall be stated and the maximum allowable limit on ground vibration for all structures not listed in subsection 7 of section 69-05.2-17-05.
2. Description of procedures Procedures and plans for recording and retention of retaining information on the following during blasting:
 - a. Drilling patterns, including size, number, depths, and spacing of holes.
 - b. Charge and packing of holes.
 - c. Types of fuses and detonation controls.
 - d. Sequence and timing of firing holes.
3. Description of blasting Blasting warning and site access control equipment and procedures.

4. Description of types Types, capabilities, sensitivities, and locations of use of any blast monitoring equipment and procedures proposed to be used.
5. Description of plans Plans for recording and reporting to the commission the results of preblasting surveys, if required.
6. Description of the The public notice content, procedure for implementing changes to changing the public notice, and a listing of landowners, government agencies, and other interested parties that will receive the notices.
7. Description of unavoidable Unavoidable hazardous conditions for which needing deviations from the blasting schedule will be needed and a general procedure outlining the implementation of an emergency blasting process.
8. A map shall be submitted containing the following showing areas in which:
 - a. Delineation and identification of areas within the proposed pit area in which blasting Blasting is prohibited in accordance with under section 69-05.2-17-05.
 - b. Delineation of areas within the proposed pit area in which the The maximum permissible weight of explosives to be detonated is established by subsection ~~4~~ 7 of section 69-05.2-17-05. The map must show the maximum weight of explosives shall be indicated at intervals not exceeding four hundred feet [121.92 meters] and shall continue until the maximum amount of explosives specified in subsection 1 of this section has been reached.

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

69-05.2-09-05. Permit applications - Operation plans - Air pollution control. The permit applicant shall specify the measures to be taken to comply with the air pollution control laws and regulations requirements of the state department of health and consolidated laboratories and any other measures necessary to effectively control wind erosion and attendant air pollution as required by section ~~69-05.2-13-07.~~

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-06. Permit applications - Operation plans - Transportation facilities. Each ~~permit~~ application ~~shall~~ must contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained ~~in connection with the surface coal mining and reclamation operations within the proposed permit area.~~ The description shall include a map, appropriate. Appropriate maps, descriptions, profiles, and cross sections, and the following must be included to show:

1. ~~Identification of all roads~~ Road locations.
2. Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure to meet the design requirements ~~set forth~~ in chapter 69-05.2-24.
3. Specifications for stabilization and erosion prevention for road cut and fill embankments, ditches, drains, and other side slopes.
4. ~~A report~~ Results of appropriate geotechnical analysis, where ~~commission approval of the commission~~ is required for ~~alternative specifications, or for steep cut slopes under section 69-05.2-24-03.~~
5. ~~A description of measures~~ Measures to be taken to obtain approval of the commission approval for alteration altering or relocation of relocating a natural drainageway under section 69-05.2-24-04.
6. ~~Each plan shall contain a~~ A general operations description of each road, conveyor, or rail system to be constructed, used, or maintained ~~within the proposed permit area.~~

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-07. Permit applications - Operation plans - Relocation or use of public roads. Each ~~permit~~ application ~~shall~~ must describe, with appropriate maps and cross sections, ~~the measures to be used to ensure that the interests of the public and landowners affected are protected if, under section 69-05.2-04-01, the permit applicant seeks to have the commission approve, with the approval of the proper road authority~~ measures to ensure the interests of landowners and the public are protected if the applicant plans to:

1. ~~Conducting the proposed~~ Conduct surface mining activities within one hundred feet [30.48 meters] of the right-of-way line of any public road, except where mine access or haul roads join that right of way; or

2. ~~Relocating~~ Relocate a public road.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-08. Permit applications - Operation plans - Protection of public parks. For ~~any~~ public parks or places listed on the national register of historic places that may be adversely affected by the proposed operations, each plan ~~shall provide a description of~~ must describe the ~~type and extent of effect and the~~ measures to be used to ~~minimize or:~~

1. To prevent adverse impacts; or
2. If valid existing rights exist or joint agency approval is to be obtained under section 69-05.2-04-01, to minimize adverse impacts.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-09. Permit applications - Operation plans - Surface water management - Ponds, impoundments, banks, dams, embankments, and diversions.

1. Each ~~permit~~ application ~~shall~~ must include a surface water management plan describing each ~~sedimentation pond, impoundment, dam, embankment, diversion, or other water management structure proposed for the permit area intended to meet the requirements of chapter 69-05.2-16.~~ Each surface water management plan shall must:
 - a. Delineate the watershed boundaries within the ~~proposed permit area, and adjacent area, and general area areas.~~
 - b. Identify by watershed and delineate each ~~proposed surface mining activity along with an estimate of the affected area associated with each disturbance type.~~
 - c. Identify the locations of ~~all proposed sedimentation ponds or water impoundments, whether temporary or permanent, and include a plan containing, at a minimum, the following information:~~
 - (1) A statement of the ~~The~~ purpose for which of the structure ~~will be used.~~

- (2) The name and size in acres [hectares] of the watershed affecting the structure.
 - (3) ~~A statement of the~~ The runoff and peak discharge rates attributable to the storm or storms for which the structure is designed, including supporting calculations. ~~Baseflow~~ The plan should be specified specify baseflow if appropriate.
 - (4) ~~A statement of the~~ The estimated sediment yield of the contributing watershed, calculated according to the requirements of subsection 2 of section 69-05.2-16-09, and sediment storage capacity of the structure.
 - (5) Proposed structure operations and maintenance ~~of the structure.~~
 - (6) Preliminary plan view and cross section of the ~~proposed~~ structure, to an appropriate scale, including anticipated spillway types and relative locations.
 - (7) Graphs showing elevation - area - capacity curves.
 - (8) Proposed detention time to meet the criteria of subsection 3 of section 69-05.2-16-09, if applicable, including supporting calculations.
 - (9) A certification statement which includes a certificate and schedule setting forth the ~~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 ~~shall~~ must be submitted with the ~~permit~~ application.
 - (b) Detailed design plans for a structure ~~shall~~ must be approved by the commission prior to construction.
 - (10) ~~Contain any other~~ 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 ~~the~~ 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 ~~proposed~~ permit area to achieve compliance with sections 69-05.2-16-06 and 69-05.2-16-07.

- e. Include a schedule ~~setting forth~~ of the approximate ~~dates~~ of construction dates for each ~~water management~~ structure.
- f. Identify the location of ~~any~~ proposed temporary coal processing waste disposal areas, along with ~~the~~ design specifications of ~~such structures~~ to meet the requirements ~~set forth~~ in section 69-05.2-19-03.
- g. Identify the location of ~~any~~ proposed coal processing waste dams and embankments along with ~~the~~ design specifications of ~~such structures~~ to meet the requirements ~~set forth~~ in chapter 69-05.2-20, ~~including at a minimum~~. 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 structure and the impounded material. The geotechnical investigation shall must be planned and supervised by an engineer or engineering geologist, according to the following as follows:
 - (1) ~~The~~ Determine the number, location, and depth of borings and test pits ~~shall be determined~~ using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
 - (2) ~~The~~ 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 ~~shall be considered~~.
 - (3) ~~All~~ Identify springs, seepage, and ground water flow observed or anticipated during wet periods in the ~~area of the~~ proposed dam or embankment ~~shall be identified on each plan area~~.
 - (4) Consideration shall be given to ~~Consider~~ the possibility of mudflows or other landslides into the dam, embankment, or impounded material.
- h. ~~Be~~ 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. ~~Detailed~~ The application must contain detailed design plans shall be submitted for each structure identified in subdivision c of subsection 1. These design plans shall, at a minimum 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. ~~Include~~ 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; ~~in addition to.~~ 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 ~~pertinent to the impoundment itself.~~
 - c. Include graphs showing elevation - area - capacity curves.
 - d. ~~Include a description of~~ Describe the spillway features and capacities and calculations used in their determination.
 - e. Include the computed minimum safety factor ~~of safety~~ range for the slope stability of each impounding structure which meets or exceeds the size criteria of subsection ~~15~~ 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. Describe the maintenance and operation requirements of each structure.
 - i. Describe the timetable and plans to remove each structure, if appropriate.
 - j. Include ~~such~~ additional information as ~~may be necessary to~~ enable the commission to ~~make a complete evaluation of~~ completely evaluate the structure.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990.

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. ~~For surface mining activities within the proposed permit area to be conducted within five hundred feet [152.04 meters] of an underground mine, the~~ The application shall must describe the measures needed to be used 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.

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 permit application ~~shall~~ must contain a reclamation plan for reclamation of the affected lands within the proposed permit area, showing how the permit applicant will comply with the performance standards of chapters 69-05.2-13 through 69-05.2-26 to include, at a minimum, the following information. The plan must, at a minimum, include:

1. A discussion of how the scheduling of each reclamation phase meets the requirements for contemporaneous reclamation as required by 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 of the cost of reclamation of the proposed operations required to be covered by a performance bond under chapter 69-05.2-12, with and supporting calculations for the estimates.
3. A Postmining topographic and area slope maps drawn to the specifications in section 69-05.2-08-12, and a plan for backfilling, soil stabilization, compacting, and grading, with postmining topographic maps having five-foot [1.52-meter] contour intervals and area slope maps that show the anticipated final surface configuration of the proposed permit area, in accordance with chapter 69-05.2-21. Gross The plan must provide cross sections and volumetric calculations or other appropriate information shall be provided demonstrating that there is sufficient material to achieve the proposed final surface configuration to show the final topography can be achieved.
4. A plan for the removal, reshaping, and final reclamation of each of the ~~facilities~~ 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 for revegetation as required in to meet the requirements of chapter 69-05.2-22, including, but not limited to, descriptions of the. The plan must include:
 - a. Schedule of revegetation A revegetation schedule.
 - b. Species Seed and seedling species and amounts per acre [0.40 hectare] of seeds and seedlings to be used.
 - c. Methods to be used in planting Planting and seeding methods.
 - d. Mulching techniques.
 - e. Irrigation, if appropriate, and any pest and disease control measures, if any.
 - f. General management plans until final bond release.
 - g. Methods proposed to be used to determine the success of revegetation as required in section 69-05.2-22-07.
 - ~~g-~~ h. Soil testing plan for evaluation of evaluating the results of suitable plant growth material handling and reclamation procedures related to revegetation.
7. A description of measures to be employed 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 which have been developed to preclude their sustained combustion of such materials.
8. A description, including appropriate cross sections and maps, of the measures to be used to manage mine openings, and to plug, case, or manage exploration holes, other boreholes, wells, and other openings within the proposed permit area, in accordance with under chapter 69-05.2-14.

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

69-05.2-09-12. Permit applications - Operation and reclamation plans - Surface and ground water monitoring for protection of the hydrologic balance.

1. The description required by subdivision i of subsection 2 of North Dakota Century Code section 38-14.1-14 ~~shall~~ must cover the proposed permit area, and adjacent area, and general area areas and ~~shall~~ include:
 - a. Appropriate maps and technical drawings.
 - b. A discussion of the control of surface and ground water drainage into, through, and out of the proposed permit area in accordance with under the surface water management requirements of section 69-05.2-09-09 and its relation to the monitoring requirements of this section.
 - c. A plan for the treatment, where required under North Dakota Century Code section 38-14.1-24 and this article, of surface and ground water drainage from the disturbed area to be disturbed by the proposed activities, and proposed quantitative limits on pollutants in discharges subject to section 69-05.2-16-04, according to the more stringent of the following:
 - (1) North Dakota Century Code section 38-14.1-24 and this article; or
 - (2) Other applicable state laws.
 - d. A plan for the restoration of restoring the approximate recharge capacity of the permit area required in accordance with section 69-05.2-16-15.
 - e. A plan, based on the probable hydrologic consequences (PHC) determination, for the collection, recording, and reporting of ground and surface water quality and quantity data, according to sections 69-05.2-16-05, 69-05.2-16-13, and 69-05.2-16-14.
2. The determination required by subdivision o of subsection 1 of North Dakota Century Code section 38-14.1-14 ~~shall~~ must include an analysis of the probable hydrologic consequences of the proposed surface mining activities on the extended mine plan area, proposed permit area, adjacent area, and general area with respect to the hydrologic regime and the quantity and quality of water in surface and ground water systems under all seasonal conditions and shall make use of the water quality information obtained under sections 69-05.2-08-06 and 69-05.2-08-07 a hydrologic reclamation plan that specifically addresses any potential adverse impacts identified in the probable hydrologic consequences determination and contains preventive and remedial measures for those impacts.

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

69-05.2-09-13. Permit applications - Reclamation plans - Postmining land use.

1. Each reclamation plan ~~shall~~ must contain a postmining land use map and detailed description of the ~~proposed~~ postmining land use ~~which shall explain~~ explaining:
 - a. How the ~~proposed~~ postmining land use ~~is to~~ will be achieved and the ~~necessary~~ support activities ~~which may be~~ needed to achieve the proposed land use.
 - b. ~~Where~~ The detailed management plan for native grassland or tame pastureland is the proposed postmining land use, the detailed management plan to be implemented during the bond liability period. ~~This management plan shall include~~ including any plans for livestock grazing of the ~~revegetated lands~~ prior to final bond release.
 - c. ~~Where~~ a land use different from the premining land use is proposed, all materials needed for approval of the alternative use under chapter ~~69-05.2-23.~~
2. ~~The~~ If land use changes are proposed, the description ~~shall~~ must be accompanied by a copy of the preference statement concerning the proposed use by the legal or equitable owner of record of lands within the proposed permit area and comments by the state and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation materials needed for alternate land use approval under chapter ~~69-05.2-23.~~
3. The applicant shall submit a copy of the surface owner's preference statement and comments by the state and local authorities who would have to initiate, implement, approve, or authorize the land use following reclamation.

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

69-05.2-09-14. Permit applications - Reclamation plans - Disposal of initial pit spoil and other excess spoil.

1. Each permit application ~~shall~~ must contain descriptions, ~~including appropriate~~ maps, and cross-section drawings, of the

proposed disposal site and ~~design of the~~ spoil disposal area design according to chapter 69-05.2-18. These plans ~~shall~~ must describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.

2. Each permit application ~~shall~~ must contain the results of a geotechnical investigation of the proposed disposal site including the following:
 - a. The character of bedrock and any adverse geologic conditions in the disposal area.
 - b. A survey identifying all springs Springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site during wet periods.
 - c. A survey of the The potential effects of subsidence of the subsurface strata due to past and future mining operations.
 - d. A stability analysis including, ~~but not limited to,~~ strength parameters, pore pressures, and long-term seepage conditions. ~~These data shall be accompanied by, and a~~ description of all engineering design assumptions ~~and,~~ calculations and ~~the~~ alternatives considered in selecting the specific design specifications and methods. The commission may waive the stability analysis may be waived by the commission, following analysis of after analyzing the results of the geotechnical investigation provisions in subdivisions a, b, and c, if it is found that:
 - (1) No adverse geologic conditions exist in the disposal area.
 - (2) There are no springs, and there is no seepage, or ground water flow in the disposal site area of the disposal site.
 - (3) There is no potential for subsidence of subsurface strata due to past and future mining operations.
 - (4) The slope of the disposal area does not exceed twenty percent.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-15. Permit applications - Operation and reclamation plans - Prime farmlands. If ~~land to be mined within the proposed permit~~

area is identified as prime farmland under section 69-05.2-08-09, the permit applicant shall appropriate, the applicant shall submit a mining and restoration plan for the mining and restoration of the land in accordance with the performance standards of chapter 69-05.2-26 which shall contain, at a minimum prime farmland containing:

1. The cooperative soil survey that identified the prime farmland including, soil mapping unit units, and representative soil profile descriptions. The plan must include soil horizon depths, pH, and range of soil densities for each prime farmland soil mapping unit.
2. The proposed method and type of equipment to be used for removal, storage, and replacement of the removing, storing, and respreading suitable plant growth materials.
3. The location of areas to be used Locations for the separate stockpiling of the suitable plant growth materials and plans for soil stabilization before redistribution.
4. The postmining topographic map showing the areas where suitable plant growth material from prime farmland will be respread areas.
5. If applicable, Applicable documentation such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable strata, instead of the A, B, or C soil horizon, to obtain on the restored area equivalent or higher levels of productivity as nonmined prime farmlands in the surrounding area under equivalent management levels of management.
6. Plans for seeding or cropping the area to be reestablished as prime farmland and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under chapter 69-05.2-12. Proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions or implemented.
7. Available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that affirmatively demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of productivity after mining as existed before mining achievement of postmining productivity equal to or greater than premining productivity.

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

69-05.2-09-16. Permit applications - Operation and reclamation plans - Alluvial valley floors. Each ~~permit~~ application ~~shall~~ must contain operation and reclamation plans for ~~those~~ lands ~~within~~ in the ~~proposed~~ permit ~~area~~ or adjacent area ~~that have been~~ identified as an alluvial valley floor. ~~The plans shall contain a complete description of~~ The plan must describe the mining and reclamation procedures that will protect or restore the alluvial valley floor characteristics or essential hydrologic functions identified pursuant to ~~in~~ section 69-05.2-08-14 and ~~shall~~ meet the performance standards of chapter 69-05.2-25. ~~Additionally, The applicant shall submit an alluvial valley floor monitoring program shall be submitted pursuant to under~~ section 69-05.2-25-03 designed to collect sufficient information to demonstrate compliance with the approved ~~operation and reclamation plans. The proposed operation and reclamation plans, together with other relevant information, will be used by the commission as a basis for approval or denial of a permit within or adjacent to an alluvial valley floor.~~

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

69-05.2-09-17. Permit applications - Operation and reclamation plans - Fish and wildlife resources.

1. Each ~~permit~~ application ~~shall~~ must contain a fish and wildlife management plan for the ~~proposed~~ permit ~~area~~ and adjacent areas where impacts could reasonably be expected ~~to occur~~. The plan ~~shall~~ must describe the mining and reclamation procedures to be used to comply with section 69-05.2-13-08.
2. ~~Each permit~~ If impacts are expected, each application shall must contain a fish and wildlife monitoring plan whereby to monitor selected indicator species of fish and wildlife are monitored to assess the effects of surface mining effects on fish and wildlife resources. Species to be monitored shall be selected by the permit applicant in consultation The applicant shall consult with the commission and the state game and fish department before selecting the indicator species.
3. Results from implementing the fish and wildlife The applicant shall report management plan results and data derived from the fish and wildlife monitoring plan for the calendar year shall be reported to the commission by each February fifteenth every year.

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, 38-14.1-24

69-05.2-09-18. Permit applications - Operations and reclamation plans - Auger mining. If ~~auger mining operations are proposed to be conducted~~ applicable, the ~~permit~~ applicant shall submit a plan ~~which explains explaining~~ how the ~~permit~~ applicant intends to comply with ~~the requirements of~~ section 69-05.2-13-12 and subsection 1.1 of North Dakota Century Code section 38-14.1-24. This plan must contain, ~~at a minimum~~:

1. A description of the augering methods ~~to be used~~.
2. ~~An identification, on a~~ A map, showing where augering operations will be conducted.
3. A description, ~~with sufficient detailed supporting information,~~ of how the ~~permit~~ applicant intends to ensure the long-term stability of the augered area. This description should contain specific engineering designs ~~which will ensure~~ ensuring that:
 - a. Material backfilled into the ~~auger~~ holes can be compacted to provide sufficient strength ~~to the material~~ to prevent subsidence;
 - b. The coal remaining between the auger holes and the overlying overburden is ~~of sufficient strength~~ sufficiently strong to prevent subsidence; or
 - c. The auger mined area can be collapsed in a controlled manner through the use of explosive or other techniques ~~which will to~~ eliminate any possible future subsidence.
4. A description of how ~~all~~ auger holes will be sealed to prevent pollution of surface and ground water.

History: Effective September 1, 1984; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-24

69-05.2-09-19. Permit applications - Operations and reclamation plans - Coal preparation plants not located within the permit area of a mine.

1. This section applies to any person who operates or intends to operate a coal preparation plant outside the permit area of any mine, other than ~~such~~ plants ~~which are~~ located at the site of the ultimate coal use. A permit to operate must be obtained from the commission.

2. In addition to meeting the applicable provisions of chapters 69-05.2-05, 69-05.2-06, 69-05.2-07, 69-05.2-08, and this chapter, any application for a permit for operations covered by this section must contain an operation and reclamation plan for the construction, operation, maintenance, modification, and removal of the preparation plant and associated support facilities. The plan must demonstrate that those operations will be conducted in compliance with section 69-05.2-13-13.
3. No permit ~~may~~ will be issued for any operation covered by this section unless the commission finds in writing that, in addition to meeting all other applicable requirements of this article, the operations will be conducted ~~in compliance with~~ according to the requirements of section 69-05.2-13-13.
4. Any person who operates a coal preparation plant that was not subject to this article prior to January 1, 1987, shall apply for a permit within one hundred twenty days after that date.
5. Any person operating a coal preparation plant that was not subject to this article prior to January 1, 1987, may continue to operate without a permit provided:
 - a. A permit application is timely filed in accordance with subsection 4 of this section;
 - b. The commission has yet to either issue or deny the permit; and
 - c. The person complies with the applicable performance standards of section ~~69-05.2-13-13~~.

History: Effective January 1, 1987; amended effective May 1, 1990.

General Authority: NDCC ~~38-14.2-03~~ 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-10-01. Permit applications - Public notices of filing.

1. The ~~permit application~~ advertisement required by North Dakota Century Code section 38-14.1-18 ~~shall~~ must also include:
 - a. The applicant's name and business address ~~of the permit applicant~~.
 - b. A map or description which ~~shall~~ must:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area.

- (2) Clearly show or describe the exact location and boundaries of the ~~proposed~~ permit area.
 - (3) ~~State the name of~~ Name the United States geological survey 7.5-minute quadrangle map which contains the area shown or described.
 - (4) ~~If a map is used, indicate~~ Show the north point (if a map).
 - (5) State the name of ~~the each~~ owner or owners of record of surface rights and coal ~~mineral~~ rights within the permit boundaries of the ~~proposed~~ permit area.
- c. The address of the commission, to whom written comments, objections, or requests for informal conferences on the ~~permit~~ application may be submitted.
 - d. If an applicant seeks a permit to conduct ~~surface coal mining~~ operations within one hundred feet [30.48 meters] of the outside right of way of a public road or to relocate a public road, a concise statement describing the ~~public~~ road, the particular part to be relocated, ~~if applicable,~~ where the relocation is to occur, and ~~the~~ its duration of the relocation.
2. The commission ~~shall~~ will distribute appropriate portions of the ~~permit~~ application to the state advisory committee specified in subsection 2 of North Dakota Century Code section 38-14.1-21 formed to aid the commission in evaluating the operations and reclamation plan. Members of the ~~advisory~~ committee shall forward their evaluation of ~~the plan~~ to the commission within forty-five days of receipt.
 3. If the ~~permit~~ application contains prime farmlands ~~that will~~ to be mined, the commission ~~shall~~ will furnish the state conservationist of the United States soil conservation service with the ~~portion of the permit application that pertains to~~ the prime farmland reclamation plan submitted under section 69-05.2-09-15. The state conservationist shall provide review and comment on the proposed method of soil reconstruction ~~in the plan submitted under section 69-05.2-09-15.~~ if the state conservationist considers those methods to be inadequate, the state conservationist shall and suggest remedial revisions resulting in more complete and adequate reconstruction if the plan is considered inadequate.
 4. The ~~permit~~ applicant shall make a copy of the complete application ~~for a permit~~ available for the public to inspect and copy by filing a copy of the application submitted to the ~~commission~~ it with the county auditor in the county where the mining is proposed to occur. The ~~permit~~ applicant shall file the copy of the ~~permit application~~ by the first date of the

newspaper advertisement of the application. The applicant shall file and any subsequent changes to the permit application at the same time they are submitted to the commission.

5. In addition to the requirements of subsection 3 of section 38-14.1-18 of the North Dakota Century Code, the commission will notify all federal or state government agencies with authority to issue permits and licenses applicable to the proposed operations as part of the permit coordinating process and those with an interest in the proposed operations. These agencies include the United States soil conservation service district office, the local United States army corps of engineers district engineer, the national park service, and the United States fish and wildlife service.
6. The commission will provide notice and opportunity for hearing for persons seeking and opposing disclosure prior to declaring any permit information confidential. Notice will be published in the official county newspaper of the county where the proposed operations will be located at least fifteen days prior to the hearing. Information requested to be held confidential must be clearly identified by the applicant and submitted separately. Confidential information is limited to:
 - a. Analysis of the chemical and physical properties of the coal to be mined, except information on coal components potentially toxic in the environment.
 - b. The nature and location of archeological resources on public land and Indian land as required by the Archeological Resources Protection Act of 1979.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

69-05.2-10-02. Permit applications - Informal conferences.

1. A request for an informal conference pursuant to under subsection 5 of North Dakota Century Code section 38-14.1-18 shall ~~must~~ be in writing and shall:
 - a. Briefly summarize the issues ~~to be raised by~~ the requestor ~~at the conference~~ will raise.
 - b. State whether the requestor desires to have the conference conducted in the locality of the proposed mining operations.

2. The commission ~~shall~~ will appoint one or more hearing examiners to preside at informal conferences on permit applications held pursuant to under this section. No commissioner ~~shall~~ may preside at such informal conference. Hearing examiners appointed under this section shall have the authority delegated under section 69-02-04-07.
3. Informal conferences held in accordance with under this section may be used by the commission as the public hearing opportunity required under section 69-05.2-04-01 on proposed uses or relocation of public roads.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

69-05.2-10-03. Permit applications - Criteria for permit approval or denial.

1. If the commission determines from either the schedule submitted as part of the permit application or from other available information, that any surface coal mining operation owned or controlled by the permit applicant is currently in violation of any law or rule of this state, or of any law or rule in any state enacted pursuant to under federal law, rule, or regulation pertaining to air or water environmental protection or surface coal mining and reclamation, the commission ~~shall~~ will require the permit applicant, before the issuance of the permit, to either:
 - a. Submit to the commission proof which is satisfactory to the regulatory authority, ~~department, or agency which has with jurisdiction over such the violation,~~ that the violation:
 - (1) Has been corrected; or
 - (2) Is in the process of being corrected; or
 - b. Establish to the commission that the permit applicant it has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then any surface coal mining operations being conducted under a permit issued according to under this section shall be immediately ~~terminated, unless and cease,~~ until the provisions of subdivision a are satisfied.
2. Before any final determination by the commission that the permit applicant, or the operator specified in the

application, controls or has controlled mining operations with a demonstrated pattern of willful violations of any law or rule of this state, or of any law or rule in any state enacted pursuant to under federal law, rule, or regulation pertaining to air or water environmental protection or surface coal mining and reclamation of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with those laws, rules, or regulations, the permit applicant or operator shall be afforded given an opportunity for an adjudicatory hearing on the determination. ~~Such hearing shall be conducted pursuant to under~~ North Dakota Century Code section 38-14.1-30.

3. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit application shall or significant revision will be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information ~~set forth~~ in the application or ~~from information~~ otherwise available, which is documented in the approval and made available to the permit applicant, that:
 - a. The proposed permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or such permit areas have the area has met the permit application review procedures of section 69-05.2-04-01.
 - b. For alluvial valley floors:
 - (1) The permit applicant has obtained either an alluvial valley floor a negative determination; or if
 - (2) If the proposed permit area or adjacent area contains lands identified as an alluvial valley floor:
 - (a) The proposed operations would be conducted in accordance with according to chapter 69-05.2-25 and all other applicable requirements of North Dakota Century Code chapter 38-14.1.
 - (b) Any change in the ~~land~~ use of the lands covered by the proposed permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.
- ~~(2)~~ (3) The significance of the impact of the proposed operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent

criteria established by the commission as suitable for site-specific protection of agricultural activities in alluvial valley floors.

~~(3)~~ (4) Criteria for determining whether a surface coal mining operation will materially damage the quantity or quality of waters shall include, but are not limited to:

- (a) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor, as measured by specific conductance in millimhos, to levels above the threshold value at which crop yields decrease, based on crop salt tolerance research studies approved by the commission, unless the permit applicant demonstrates compliance with subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21.
- (b) ~~Potential~~ The increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor in excess of the threshold value at which crop yields decrease shall ~~subparagraph a will not be allowed unless the permit applicant demonstrates, through testing related to the local crop production of crops grown in the locality, that the proposed operations will not cause increases in total dissolved solids that will result in crop yield decreases~~ decrease crop yields.
- (c) For types of vegetation specified by the commission and not listed in approved crop tolerance research studies, a consideration ~~shall~~ must be made of any observed correlation between total dissolved ~~solid~~ solids concentrations in water and crop yield declines, taking into account the extent of the correlation.
- (d) Potential increases in the average depth to water saturated zones (during the growing season) ~~located~~ within the root zone of the ~~alluvial valley floor~~ that would reduce the amount of subirrigated land compared to premining conditions.
- (e) Potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions.

- (f) Potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased root zone saturation of the root zone.
- ~~(4)~~ (5) For the purposes of this subsection, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage [hectarage] and boundaries in existence prior to July 1, 1979, or, if established after July 1, 1979, with ~~those~~ boundaries based on enhancement of the farm's agricultural productivity and not related to ~~surface coal~~ mining operations.
- (6) If the commission determines the statutory exclusions of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply and that any of the findings required by this section cannot be made, the commission may, at the applicant's request:
- (a) Determine that mining is precluded and deny the permit without the applicant filing any additional information required by this section;
or
- (b) Prohibit surface coal mining and reclamation operations in all or part of the area to be affected by mining.
- c. The ~~permit~~ applicant has, with respect to prime farmland, obtained either a negative determination or if the ~~proposed~~ permit area contains prime farmlands:
- (1) The ~~proposed~~ postmining land use of these prime farmlands will be cropland.
- (2) The permit specifically incorporates as specific conditions the contents of the plan submitted under section 69-05.2-09-15 after consideration of any revisions to that plan suggested by the United States soil conservation service under subsection 3 of section 69-05.2-10-01.
- (3) The ~~proposed~~ operations will be conducted in compliance with the requirements of chapter 69-05.2-26 and other environmental protection performance and reclamation standards for mining required by this article and North Dakota Century Code chapter 38-14.1.
- d. The ~~surface coal~~ mining and reclamation operations will not affect the continued existence of endangered or

threatened species or result in the destruction or adverse modification of their critical habitats.

- e. The permit applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R have been paid.
 - f. The applicant has, if applicable, satisfied the requirements for approval of a cropland postmining land use under section 69-05.2-22-01.
4. If the commission finds The commission may make necessary changes in the permit to avoid adverse effects on finding that surface coal mining and reclamation operations may adversely affect any publicly owned park or places included on the state historic sites registry or the national register of historic places; the commission may make such changes in the permit as it may deem necessary to avoid the adverse affect. Surface coal mining and reclamation operations. Operations that may adversely affect such those parks or historic sites shall will not be approved unless the federal, state, or local governmental agency with jurisdiction over the park or historic site agrees, in writing, that mining may be permitted allowed.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-33

69-05.2-10-04. Permit applications - Criteria for permit approval or denial - Existing structures.

1. No application for a permit which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall will be approved, unless the permit applicant demonstrates and the commission finds in writing on the basis of information set forth in the complete application that:
 - a. If the permit applicant proposes to use an existing structure in accordance with under the exemption provided in subsection 4 of section 69-05.2-09-03:
 - (1) The structure meets the performance standards of North Dakota Century Code chapter 38-14.1 and this article.
 - (2) No There will be no significant harm to the environment or public health or safety will result from use of the structure.

- b. If the commission finds that an existing structure does not meet the performance standards of this article and North Dakota Century Code section 38-14.1-24, the commission shall require the permit applicant to shall submit a compliance plan for modification modifying or reconstruction of rebuilding the structure and shall find prior to the issuance of the permit. The permit will not be issued unless the commission finds that:
- (1) The modification or reconstruction ~~of the structure~~ will bring the structure into compliance with the design and performance standards of this article and North Dakota Century Code section 38-14.1-24 as soon as possible, but not later than six months after permit issuance of the permit;
 - (2) The risk of ~~harm~~ to the environment or to public health or safety is not significant during ~~the period~~ of modification or reconstruction; and
 - (3) The ~~permit~~ applicant will monitor the structure to determine compliance with ~~the performance standards~~ of this article and North Dakota Century Code section 38-14.1-24.
2. Should the commission find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the ~~permit~~ applicant will be required to shall abandon the existing structure. The structure shall must not be used ~~for or to facilitate surface coal mining operations~~ after the effective date of ~~issuance~~ of the permit. Abandonment of the structure shall Structure abandonment must proceed on a schedule approved by the ~~commission, in compliance with~~ under section 69-05.2-13-11.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14, 38-14.1-21

69-05.2-10-05. Permit applications - Approval or denial actions. The commission ~~shall~~ will approve, require modification of, or deny all applications for permits according to the following:

1. The commission ~~shall~~ will not approve or disapprove a permit application prior to the expiration of the thirty-day period for requesting an informal conference or the filing of written comments or objections following the last publication of the public notice required by North Dakota Century Code section 38-14.1-18.
2. If no informal conference has been held in accordance with under North Dakota Century Code section 38-14.1-19, the

commission ~~shall~~ will approve, require modification of, or deny all permit applications for permits within the review period specified in section 69-05.2-05-01.

3. If ~~a permit~~ an application is approved, the permit ~~issued by the commission shall will~~ contain the following ~~specific~~ conditions:
 - a. The permittee shall ~~take all possible steps to~~ minimize ~~any~~ adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, ~~but not limited to~~:
 - (1) ~~Any accelerated~~ Accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance.
 - (2) Immediate implementation of compliance measures necessary to comply.
 - (3) Warning, as soon as possible after learning of ~~such~~ noncompliance, any person whose health and safety is in imminent danger ~~due to the noncompliance~~.
 - b. The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the ~~course of~~ treatment or control of waters or atmospheric emissions ~~to the air in the manner as required by North Dakota Century Code chapter 38-14.1 and, this article, and which prevents violation of any other applicable law~~.
 - c. The permittee shall conduct ~~its~~ operations:
 - (1) In accordance with any measures specified in the permit as necessary to To prevent significant, imminent environmental harm to the public health or safety of the public; and
 - (2) Utilizing ~~any~~ methods specified in the permit ~~by if the commission in approving approves~~ alternative methods of compliance with the performance standards of North Dakota Century Code section 38-14.1-24 and this article, ~~in accordance with the provisions of North Dakota Century Code chapter 38-14.1 and this article~~.
 - d. The operator shall pay all reclamation fees required by 30 CFR subchapter R for coal produced under the permit for sale, transfer, or use.
4. ~~Upon~~ When the approval of a permit application is approved, the commission ~~shall will~~ publish notice of the ~~decision~~ in the official county newspapers and in daily newspapers of

general circulation in the area of the proposed ~~surface coal mining and reclamation~~ operations. The publication ~~shall~~ will provide a summary of the decision and notice that any person with an interest which is or may be adversely affected may request and initiate formal hearing procedures on the decision ~~issuing the permit~~ and may request temporary relief from ~~the permit issuance of the permit~~ within thirty days of the publication of the notice.

5. At the time of publication of the decision required by subsection 4, the commission ~~shall~~ will:
 - a. Provide copies of all ~~commission~~ findings, decisions, and orders on ~~a permit~~ an application to:
 - (1) Each person and government official who filed a written objection or comment ~~with respect to the permit application.~~
 - (2) Each reclamation advisory committee member.
 - (3) The office of surface mining reclamation and enforcement, ~~United States department of interior,~~ together with a copy of the approved ~~permit~~ application materials.
 - b. Notify the appropriate government officials in the relevant county in which the area of land to be affected is located that a permit application has been approved and describe the location of the lands.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-21

69-05.2-10-06. Permit applications - Permit approval for surface disturbances over federal mineral estates. The commission may approve and issue permits, ~~permit~~ revisions, and ~~permit~~ renewals for ~~surface coal mining and reclamation~~ operations on lands where the surface estate is nonfederal and the mineral estate is federal, provided that if:

1. The proposed surface disturbances ~~are planned to~~ support ~~surface coal mining and reclamation~~ operations on adjacent nonfederal lands.
2. The commission consults with the office of surface mining reclamation and enforcement, ~~United States department of interior,~~ in order to ensure that actions are not taken which would substantially and adversely affect the federal mineral estate.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

69-05.2-11-01. Review of approved permits.

1. The commission ~~shall~~ will review each permit ~~issued, no less frequently than the permit~~ at midterm or every five years, whichever is more frequent.
2. After ~~this~~ permit review, the commission may, ~~by order,~~ require reasonable revision or modification ~~of the permit provisions~~ to ensure compliance with North Dakota Century Code chapter 38-14.1 and this article.
3. Copies of the ~~commission's decision of the commission~~ shall be sent to the permittee.
4. Any ~~order of the commission requiring~~ required permit revision or modification of permits ~~shall be~~ is subject to the ~~provisions for administrative review~~ under North Dakota Century Code ~~section~~ sections 38-14.1-30 and ~~judicial review~~ under North Dakota Century Code ~~section~~ 38-14.1-35.

History: Effective August 1, 1980; amended effective May 1, 1990.

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 to a permit ~~shall be obtained~~ is required:
 - a. For changes in the surface coal mining or reclamation operations described in the permit application and approved under the existing permit, when such changes constitute a departure from the method of conduct of mining or reclamation operations contemplated by methods approved in the original permit.
 - b. For those new surface coal mining and reclamation operations proposed to be initiated within a permit area that are not specified and approved in the existing permit for such area.
 - c. When a new coal removal subarea of the existing permit area, identified pursuant to subsection ~~†~~ of section ~~69-05.2-08-01,~~ is proposed to be disturbed by mining in accordance with the timing and sequence of subareas approved in the permit. Such a The revision ~~shall be~~ is considered a significant alteration to the mining and

reclamation plan as set forth in subdivision a of subsection 5 of this section.

- d. For acreage changes proposed to add or delete lands to or from an existing permit area when necessary to accommodate revisions in the surface coal mining and reclamation operations and when submitted in accordance with under subsection 2 or subsection 6.
 - e. When required by an order issued 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 of time is requested pursuant to subdivision a of under subsection 3 of North Dakota Century Code section 38-14.1-12.
2. A permittee may request additional acreage [hectarage] to be included in a permit as a part of a permit revision application if in the judgment of the commission, such additional acreage [hectarage] is considered to be considers the addition an incidental boundary change to the original permit area. Permit revision This acreage [hectarage] approved by the commission as an extension to the original permit area because of incidental boundary revisions shall will have the same permit term as the original permit.
 3. Any application for revision of a permit shall Revision applications must be filed with the commission and approved before the date on which the permittee expects to change the surface coal mining and reclamation operations or initiate new operations not previously approved.
 4. An A revision application for permit revision shall must include:
 - a. A narrative describing the proposed permit 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 shall will review and issue a decision on each permit revision application according to the following:

- a. The commission ~~shall review an application for a permit revision and make a determination~~ will determine on the basis of the existing permit and the environmental resources of the permit area ~~as to whether the proposed permit revision is a significant alteration or addition to the approved operations and reclamation plan.~~ If the ~~permit proposed revision application is found to be a significant alteration in the existing permit,~~ the commission ~~shall will~~ notify the permittee in writing of the decision and, ~~at a minimum, the.~~ The application ~~shall be~~ 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.
- ~~b.~~ Permit revision applications submitted to the commission that are found not to be a significant alteration to an existing permit Insignificant revisions are not subject to ~~the these~~ notice, hearing, and procedural requirements of chapter ~~69-05.2-10~~ and North Dakota Century Code chapter ~~38-14.1~~.
- ~~c.~~ b. The commission ~~shall will~~ distribute copies of the permit revision application and supporting materials to the appropriate members of the state advisory committee specified in subsection 2 of North Dakota Century Code section ~~38-14.1-21~~ formed to aid the commission in evaluating the operations and reclamation plan. Members of the advisory committee. Committee members shall forward their evaluation of the plan to the commission within ~~forty five~~ twenty days of receipt.
- ~~d.~~ c. The commission ~~shall,~~ upon the basis of a complete application, ~~approve, require modification of, or disapprove~~ will issue a decision on each permit revision significant application that is found to be a significant alteration in the existing permit, in accordance with the time periods and procedures contained in section 69-05.2-05-01. The director of the commission's reclamation division of the North Dakota public service commission ~~shall approve, require modification of, or disapprove permit revision will issue a decision on insignificant applications that do not constitute a significant alteration to a previously approved permit in a timely manner taking into account the complexity of the permit revision application as soon as practicable.~~
- ~~e.~~ d. No permit revision application ~~shall will~~ be approved unless the permittee affirmatively demonstrates and the commission finds in writing written findings are made that all of the permit approval standards of sections subsection 3 of section 69-05.2-10-03, section 69-05.2-10-04, and 69-05.2-10-06 and subsection 3 of North

Dakota Century Code section 38-14.1-21 are met in the application.

6. A permittee may file a permit revision an application to withdraw any lands previously approved as a part of a permit area, except lands on which surface coal mining and reclamation operations have commenced as a part of the approved permit. The permittee shall demonstrate and certify as a part of the revision application that the proposed acreage [hectarage] to be deleted from the permit area has not been affected by the surface mining activities. Permit revision applications Applications to delete undisturbed acreage [hectarage] from a surface coal mining and reclamation operations permit shall are not be 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.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

69-05.2-11-03. Permit renewals - Applications.

1. Successive renewal shall be is available only for those land areas lands within the permit boundaries of the approved permit and for any incidental boundary changes approved by the commission in accordance with the permit revision procedures of under section 69-05.2-11-02. Permit areas that meet the final performance bond release requirements of section 69-05.2-12-11 and North Dakota Century Code section 38-14.1-17 and for which the entire performance released from all bond has been released by the commission shall will not be renewed upon expiration of the permit term.
2. Renewal applications shall must be in a form required by the commission, and shall include, at a minimum, the following:
 - a. A statement of the The name and address of the permittee, the term of the renewal requested, the permit number, and a description of any acreage [hectarage] changes or other changes to the matters set forth in the original permit application for a permit or prior permit renewal.
 - b. A statement of the The reasons for requesting a permit renewal.
 - c. A copy of the text of the newspaper notice prepared according to requirements specified in subsection 3. Proof of publication of this notice shall be furnished The applicant shall furnish proof of publication to the

commission by the permit applicant after the last required publication date.

- d. Evidence that adequate liability insurance pursuant to section 69-05.2-12-20 and subsection 3 of North Dakota Century Code section 38-14.1-14 will be provided by the permit applicant for the proposed renewal period of renewal.
 - e. Evidence that the performance bond pursuant to chapter 69-05.2-12 and North Dakota Century Code section 38-14.1-16 in effect for the permit area is of sufficient amount and will continue in full force for the proposed renewal period of renewal.
3. Complete renewal applications for permit renewal shall be are subject to the requirements of public notification contained requirements in section 69-05.2-10-01 and North Dakota Century Code section 38-14.1-18.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-22

69-05.2-11-04. Permit renewals - Approval or denial. The commission ~~shall~~ will send copies of its decision to approve or deny a permit renewal to the permit applicant, any persons who filed objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-22

69-05.2-11-05. Permit renewal - Limitation. Any surface coal mining permit issued by the commission prior to July 1, 1979, that expires prior to the reapplication requirements of section 69-05.2-05-05 and North Dakota Century Code section 38-14.1-11 may be renewed by the commission subject to the following conditions:

1. The term of the permit renewal for those lands submitted as a part of the state program permit reapplication shall continue only until such time as a new permit under the reapplication requirements of section 69-05.2-05-05 and North Dakota Century Code section 38-14.1-11 is approved by the commission;
2. The permit renewal shall apply only to those lands included within the original permit area and any amendments or revisions thereto; and

3. The surface coal mining operations must be conducted in compliance with North Dakota Century Code chapter ~~38-14.1~~ and ~~this article.~~ Repealed effective May 1, 1990.

History: ~~Effective August 1, 1980.~~

General Authority: ~~NDCC 38-14.1-03~~

Law Implemented: ~~NDCC 38-14.1-22~~

69-05.2-11-06. Transfer, sale, or assignment of rights granted under permit.

1. Any person seeking to succeed by transfer, sale, or assignment to the rights granted by a permit ~~issued by the commission~~ shall, prior to the date of such transfer, sale, or assignment:

- a. Obtain the performance bond coverage of the original permittee by:

- (1) Obtaining transfer of the original bond;
- (2) Obtaining a written agreement with the original permittee and all subsequent successors in interest, ~~if any,~~ that the bond posted by the original permittee and all successors ~~shall will~~ continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond ~~be supplemented as may be required by the commission requires.~~ If such an agreement is reached, the commission may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement; or
- (3) Providing sufficient bond or acceptable alternative to cover the original permit in its entirety from inception to completion of reclamation operations; ~~or~~
- ~~(4)~~ Such other methods as would provide that reclamation of all areas affected by the original permittee is assured under bonding coverage at least equal to that of the original permittee.

- b. Provide the commission with an application for approval of ~~such~~ proposed transfer, sale, or assignment, including:

- (1) The name and address of the existing permittee;
- (2) The name and address of the person proposing to succeed by ~~such~~ transfer, sale, or assignment and the name and address of that person's resident agent; ~~or~~

- (3) A brief description of the proposed action requiring approval; and
 - (4) The ~~same~~ information ~~as is~~ required by sections 69-05.2-06-01, 69-05.2-06-02, and 69-05.2-06-03 and subdivisions c, e, and h of subsection 1 and subsection 3 of North Dakota Century Code section 38-14.1-14.
- c. Obtain the commission's written approval ~~of the commission~~ for transfer, sale, or assignment of rights, according to subsection 2.
2. The person applying for approval of ~~such~~ transfer, sale, or assignment of rights granted by a permit shall advertise the filing of the application ~~in accordance with~~ according to section 69-05.2-10-01 and North Dakota Century Code section 38-14.1-18, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent.
 3. Any person whose interests are or may be adversely affected, including, ~~but not limited to,~~ the head of any local or state government agency, may submit written comments to the commission on the application for approval ~~to the commission,~~ within the time periods and in accordance with ~~under~~ the procedures ~~specified~~ in chapter 69-05.2-10.
 4. The commission may, upon the basis of ~~based on~~ the applicant's compliance with ~~the requirements of~~ subsections 1 and 2, grant written approval for the transfer, sale, or assignment of rights under a permit, if it first finds, in writing, that:
 - a. The ~~person seeking approval~~ applicant will conduct the operations ~~covered by the permit~~ in accordance with ~~the requirements of~~ North Dakota Century Code chapter 38-14.1 and this article.
 - b. The applicant has submitted a ~~performance~~ bond or other guarantee ~~as required by chapter 69-05.2-12 and~~ at least equivalent to the ~~bond or other guarantee of the~~ original permittee.
 - c. The applicant will continue to conduct ~~the~~ operations ~~involved in full~~ compliance with the terms and conditions of the original permit, ~~unless and~~ until it has obtained a new permit in accordance with ~~under~~ section 69-05.2-11-07.
 - d. The applicant is eligible to receive a permit under section 69-05.2-10-03.

5. The commission will notify the permittee, successor, commentors, and the office of surface mining reclamation and enforcement of its findings.
6. The successor shall immediately notify the commission of the consummation of the transfer, assignment, or sale of permit rights.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

69-05.2-11-07. Successor in interest to permittee - New permit. Any successor in interest seeking to change the mining or reclamation operations, or any of the terms or conditions of the original permit shall, within thirty days after ~~that~~ succession is approved ~~by the commission~~:

1. ~~Make application~~ Apply for a new permit under chapters 69-05.2-05 through 69-05.2-09, if the change involves conducting operations outside the original permit area; or
2. ~~With the approval of the commission, make application~~ Apply for a revised permit under section 69-05.2-11-02.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-23

69-05.2-12-03. Performance bond - Surety bond. Surety bonds shall be subject to the conditions of subsections 6 and 7 of North Dakota Century Code section 38-14.1-16 and the following conditions:

1. The notice required by subsection 6 of North Dakota Century Code section 38-14.1-16 shall be by certified mail to the permittee and the commission and is not effective until received by both.
 - a. Cancellation is not effective for lands subject to bond coverage which are disturbed after receipt of notice, but prior to approval by the commission.
 - b. The commission may approve cancellation if a replacement bond is filed by the permittee prior to the cancellation date, or the permit is revised so that the surface coal mining operations approved under the permit are reduced to cover all the costs for completion of reclamation operations.
2. The bond must provide that:

- a. The surety will promptly notify the permittee and the commission of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business.
 - b. If the surety becomes unable to fulfill its obligations under the bond, it shall immediately notify the permittee and the commission.
 - c. The surety and permittee are jointly and severally liable.
 - d. The surety may not cancel the bond during the period of liability, except as provided in subsection 6 of North Dakota Century Code section 38-14.1-16 and subsection 1 of this section.
3. Upon the incapacity of a surety by reason of bankruptcy, insolvency, or suspension or revocation of its license to do business in North Dakota, the permittee ~~shall be~~ is deemed to be without bond coverage, and shall, ~~within thirty days~~ after receiving notice from the commission, substitute for that surety, a surety licensed to do business in North Dakota, or provide a collateral substitute performance 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 will suspend the permit, and the operator shall cease surface mining activities and comply with section 69-05.2-13-11.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-04. Performance bond - Collateral bond. The guarantor of a collateral bond may be the permit applicant or a qualified third party.

1. Collateral bonds, ~~other than real property collateral,~~ are subject to the following conditions:
 - a. All collateral must be kept in the commission's custody until authorized for release or replacement.
 - b. Collateral must be valued at market value.
 - c. Certificates of deposit must be assigned to the state, in writing, and upon the books of the issuer.

- d. Except for certificates issued by the Bank of North Dakota, the commission ~~shall~~ will not accept an individual certificate in excess of one hundred thousand dollars, or the maximum amount insured by the federal deposit insurance corporation and the federal savings and loan insurance corporation, whichever is greater.
 - e. An issuer shall waive all rights of setoff or lien against the certificate.
 - f. The commission ~~shall~~ will accept only automatically renewable certificates of deposit.
 - g. The permit applicant shall deposit sufficient collateral to assure the commission will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond.
2. A real property collateral bond is subject to the following conditions:
- a. The applicant shall grant the commission a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to dispose of the property in case of forfeiture under section 69-05.2-12-16.
 - b. For the commission to evaluate the adequacy of the real property offered, the applicant shall submit a schedule of the real property to be mortgaged or pledged to secure the obligations under the indemnity agreement. The list must include:
 - (1) A description of the property;
 - (2) The fair market value determined by an independent appraisal by a certified appraiser approved by the commission; and
 - (3) Proof of possession and title to the real property.
 - c. Land pledged as collateral may not be disturbed under any permit while it is serving as security.
3. 2. For a collateral bond the guarantor shall execute an indemnity agreement according to subsections 9 and 10 of section 69-05.2-12-01.
4. 3. Persons with an interest in collateral posted as a bond, who desire notice of actions relating to the bond, shall request the notice in writing to the commission when collateral is offered.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-20. Liability insurance. The permittee shall submit to the commission a certificate of public liability insurance policy in accordance with subsection 3 of North Dakota Century Code section 38-14.1-14. The minimum coverage of this policy shall be as follows:

1. For bodily injury, one million dollars for each occurrence and one million dollars aggregate.
2. For property damage, five hundred thousand dollars for each occurrence and one million dollars aggregate.

Minimum coverage for bodily injury and property damage must be one million dollars for each occurrence and two million dollars aggregate.

History: Effective August 1, 1980; amended effective June 1, 1983; March 1, 1987; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-13-01. Performance standards - General requirements - Coal production and reclamation fee report. A The permittee shall furnish the commission a copy of the Coal Production and Reclamation Fee Report ~~(OSM Form 837-1)~~ submitted to the office of surface mining shall be submitted to the commission no later than reclamation and enforcement within thirty calendar days after the end of each calendar quarter.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03

69-05.2-13-02. Performance standards - General requirements - Annual map. Two The permittee shall submit two copies of an annual map shall be submitted to the commission for all permit areas by each February fifteenth every year. The information to be shown on the map shall must be reported for each calendar year of the permit term until the total all bond amount has been released. The 1:4,800 scale map shall be at a scale of 1:4,800 and shall show the following, or maps if necessary, must clearly show the following and include a legend specifying the number of acres [hectares] in each category:

1. Appropriate delineation of each Each permit area and section and quarter lines.

2. The mining and reclamation activities that occurred Activities during the year being reported for each permit which shall include, including:
 - a. Acreage [hectarage] affected ~~within the permit areas.~~
 - b. Acreage [hectarage] where suitable plant growth material removal operations have been completed.
 - c. Acreage [hectarage] where ~~surface~~ coal mining operations are completed and the contemporaneous reclamation requirement ~~pursuant to~~ of subsection 14 of North Dakota Century Code section 38-14.1-24 ~~is~~ has been initiated.
 - d. Acreage [hectarage] where grade approval has been obtained.
 - e. Acreage [hectarage] where suitable plant growth material redistribution operations have been completed.
 - f. Acreage [hectarage] planted where the ten-year revegetation period has been initiated.
 - g. Acreage [hectarage] where bond has been partially released and ~~indicating~~ the stage of release.
 - h. Acreage [hectarage] where bond has been totally released.
3. Location of suitable plant growth material stockpiles. Supporting information ~~shall~~ must include ownership, date seeded, type of material in each stockpile (topsoil or subsoil), and estimated cubic yards [meters] for each stockpile.
4. Cumulative information on the mining and reclamation activities that have occurred within each permit area which include:
 - a. Affected acreage where topsoil must be replaced. The acreage specified on the map legend must be listed separately for each surface owner unless the surface owner has agreed to soil mixing as allowed by subsection 6 of section 69-05.2-15-04. The combined acreage for all surface owners who have agreed to soil mixing must be specified on the map legend.
 - b. Affected acreage where subsoil must be replaced. The acreage specified on the map legend must be listed separately for each surface owner unless the surface owner has agreed to soil mixing as allowed by subsection 6 of section 69-05.2-15-04. The combined acreage for all surface owners who have agreed to soil mixing must be specified on the map legend.

- c. Acreage [hectarage] planted where the ten-year revegetation period has been initiated and the year ~~the revegetation period was initiated~~ of initiation.
- ~~b-~~ d. Acreage [hectarage] where bond has been partially released and ~~indicating~~ the stage of release.
- ~~c-~~ e. Acreage [hectarage] where bond has been totally released ~~pursuant to subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17.~~

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-27

69-05.2-13-03. Performance standards - General requirements - Authorizations to operate. A copy of all current permits, licenses, approved plans, or other authorizations to operate the mine ~~shall~~ must be available for inspection at or near the minesite.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-27

69-05.2-13-04. Performance standards - General requirements - Signs and markers. The permittee shall, at a minimum, comply with the following requirements for areas within a permit where a performance bond has been posted.

1. Specifications. Signs and markers ~~shall~~ must:
 - a. Be posted and maintained by the operator.
 - b. Be of a uniform design throughout the operation that can be easily seen and read.
 - c. Be made of durable material.
 - d. Conform to local ordinances and codes.
2. Duration of maintenance. Signs and markers ~~shall~~ must be maintained during all pertinent activities.
3. Mine and permit identification signs.
 - a. Identification signs ~~shall~~ must be displayed at access to the permit area from public roads.
 - b. Signs ~~shall~~ must show the name, business address, and telephone number of the operator and the identification

number of the current permit authorizing surface mining activities.

- c. Signs ~~shall~~ must be maintained until bond is released.
4. Perimeter markers. The perimeter of a permit area ~~shall~~ must be clearly marked before the beginning of surface mining activities.
5. Buffer zone markers. Buffer zones ~~shall~~ must be marked along their boundaries as required by section 69-05.2-16-20.
6. Blasting signs. If blasting is conducted, the person who conducts these activities shall:
 - a. Conspicuously display signs reading "Blasting Area" along the edge of any blasting area that comes within fifty feet [15.24 meters] of any road within the permit area, or within one hundred feet [30.48 meters] of any public road right of way.
 - b. Conspicuously flag, or post within the blasting area, the immediate vicinity of charged holes as required by section 69-05.2-17-05.
 - c. Place at all entrances to the permit area from public roads or highways conspicuous signs which state "Warning! Explosives in Use!", which clearly explain the blast warning and all-clear signals and the marking of blast areas and charged holes.
7. Suitable plant growth material markers. Stockpiled suitable plant growth material ~~shall~~ must be clearly marked.
8. Sedimentation pond markers. ~~The design sediment storage volume, calculated according to the requirements of subsection 2 of section 69-05.2-16-09, shall be clearly marked at the appropriate pool elevation. The operator shall clearly mark the pool elevation that must be maintained for the pond to have sufficient storage capacity to contain the runoff from a ten-year, twenty-four-hour precipitation event (design event).~~

History: Effective August 1, 1980; amended effective May 1, 1988; May 1, 1990.

General Authority: NDCC 38-14.1-03, 38-14.1-24

Law Implemented: NDCC 38-14.1-24, 38-14.1-27

69-05.2-13-05. Performance standards - General requirements - Minimize disturbances - Best technology currently available. All surface coal mining and reclamation operations ~~shall~~ must be conducted ~~in such a manner as~~ to minimize the disturbances on lands where coal is

not removed and to utilize the best technology currently available in order to maintain environmental integrity throughout the permit area.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-24

69-05.2-13-06. Performance standards - General requirements - Avoidance of underground mine areas. No surface coal mining activities shall be conducted closer than five hundred feet [152.40 meters] of an underground mine, except to the extent that unless the nature, timing, and sequence of the operations are jointly approved by the commission, the mine safety and health administration, and the state agency, if any, responsible for the safety of mine workers 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.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-07. Performance standards - General requirements - Air resources protection. The permittee shall comply with all applicable air pollution control laws and rules of the state department of health and consolidated laboratories and shall stabilize and protect all surface areas, including spoil piles resulting from the surface coal mining and reclamation operation, to effectively control wind erosion and attendant air pollution.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

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 in accordance with under sections 69-05.2-08-15 and 69-05.2-09-17.
2. The permittee shall promptly report to the commission the presence in the permit area of any critical habitat of a threatened or endangered species, any plant or animal listed as threatened or endangered, or any bald or golden eagle, or bald or golden eagle nest or eggs, of which that the permittee becomes aware and which was not previously reported to the commission. Upon notification, the commission will consult

the United States fish and wildlife service and the state game and fish department and then decide whether, and under what conditions, the operator may proceed.

3. The permittee shall ensure that the design and construction of electric powerlines and other transmission facilities used for or incidental to ~~the surface mining~~ activities on the permit area ~~are in accordance with~~ follow the guidelines ~~set forth~~ 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. Distribution Design and construction of distribution lines shall be designed and constructed in accordance with must follow REA bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the commission.
4. 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 ~~such~~ structures ~~so as~~ 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 ~~which contain~~ 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 ~~which are~~ 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 ~~of bonds~~.
 - (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 ~~alternative~~ postmining land use ~~on lands diverted from a fish and wildlife premining 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 ~~shall~~ 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 ~~land use~~, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for birds and small animals, unless ~~such~~ the greenbelts are inconsistent with the approved postmining land use.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-09. Performance standards - General requirements - Slides and other damage. ~~Whenever~~ The operator shall promptly notify the commission and comply with required remedial measures whenever a slide occurs which may potentially have an adverse effect on adversely affect public property, health, safety, or the environment; the operator shall notify the commission expeditiously and comply with any remedial measures required by the commission.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-13-10. Performance standards - General requirements -
Cessation of operations - Temporary.

1. Each permittee shall effectively secure surface facilities in temporarily inactive areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment ~~shall~~ does not relieve affect a permittee of permittee's obligation to comply with any permit provisions of the approved permit.
2. Before the temporary cessation of mining and reclamation temporarily ceasing or abandoning operations for a period of time other than what may be specified in the permit application, the permittee shall submit to the commission, for approval, a notice of intention to temporarily cease or abandon mining and reclamation operations. This notice shall include a statement of that effect. The notice must include the exact number of acres [hectares] which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of identify the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-13-11. Performance standards - General requirements -
Cessation of operations - Permanent. The permittee shall:

1. Upon permanent cessation of surface mining activities, the permittee shall close or Close, backfill, or otherwise permanently reclaim all affected areas, where mining has permanently ceased in accordance with this article and the permit approved by the commission.
2. ~~All~~ Remove equipment, structures, or other facilities not required for monitoring, unless approved by the commission as suitable for the postmining land use or environmental monitoring, ~~shall be removed and~~ reclaim the affected land reclaimed.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-13-12. Performance standards - General requirements - Auger mining. The operator shall:

1. Auger Conduct auger mining ~~must be conducted so as~~ to maximize the utilization and conservation of ~~the coal resources in accordance with subsection 1 of North Dakota Century Code section 38-14.1-24.~~
2. ~~The surface coal mining operator who conducts~~ Conduct augering operations ~~shall to:~~
 - a. Prevent subsidence to the extent technologically and economically feasible by one of the following methods:
 - (1) Backfilling the auger holes ~~with material sufficient~~ to assure the long-term stability of the site.
 - (2) Utilizing ~~measures consistent with~~ known technology ~~which~~ to assure the long-term structural stability of the augered area; or
 - b. ~~Adopt mining technology which provides~~ Provide for planned subsidence in a predictable and controlled manner.
3. ~~The operator shall correct any~~ Correct material damage caused to surface lands by ~~reclaiming the land surface in accordance with the appropriate requirements of North Dakota Century Code chapter 38-14.1 and this article.~~
4. ~~The operator shall, to~~ To the extent required under state law, either correct material damage resulting from subsidence caused to ~~any~~ structures or facilities by repairing the damage, or compensate the owner of ~~such~~ the structures or facilities in the full amount of the ~~diminution in value resulting from the subsidence.~~ Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancelable premium-prepaid insurance policy.
5. ~~All~~ Seal auger holes ~~must be sealed~~ with an impervious noncombustible material as ~~contemporaneously~~ soon as practicable ~~to prevent pollution of surface and ground water.~~
6. ~~All drainage from auger holes must be contained and treated~~ Contain and treat auger hole drainage to meet water quality standards and effluent limitations of section 69-05.2-16-04.
7. ~~Auger holes shall not come~~ Not auger within five hundred feet [152.4 meters] of any underground mine workings, except as approved ~~in accordance with~~ under section 69-05.2-13-06.

History: Effective September 1, 1984; amended effective June 1, 1986; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-13-13. Performance standards - General requirements - Coal preparation plants not located within the permit area of a mine. Each person who operates a coal preparation plant not within the permit area for a specific mine, other than those plants which are located at the site of ultimate coal use, shall obtain a permit in accordance with section 69-05.2-09-19, obtain a bond in accordance with chapter 69-05.2-12, and ~~shall~~ comply with the following:

1. Signs and markers for coal preparation plants, coal processing waste disposal areas, and water treatment facilities must comply with section 69-05.2-13-04.
2. Stream channel diversions must comply with section 69-05.2-16-07.
3. Drainage from any disturbed areas related to coal preparation plants must comply with chapter 69-05.2-16.
4. Permanent impoundments associated with coal preparation plants must ~~meet the requirements of~~ comply with section 69-05.2-16-12. Dams constructed of or impounding coal processing waste must comply with chapter 69-05.2-20.
5. Disposal of coal processing waste, noncoal mine waste, and excess spoil must comply with chapters 69-05.2-19 and 69-05.2-18, respectively.
6. Fish, wildlife, and related environmental values must be protected in accordance with section 69-05.2-13-08.
7. Support facilities related to coal preparation plants must comply with section 69-05.2-24-09.
8. Roads associated with coal preparation plants must comply with chapter 69-05.2-24.
9. Cessation of operations must be in accordance with sections 69-05.2-13-10 and 69-05.2-13-11.
10. Erosion and attendant air pollution must be controlled in accordance with sections 69-05.2-15-06 and 69-05.2-13-07, respectively.
11. Underground mine areas must be avoided in accordance with section 69-05.2-13-06.

12. Reclamation must follow proper suitable plant growth material handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with chapters 69-05.2-15, 69-05.2-21, 69-05.2-22, and 69-05.2-23, respectively.

History: Effective January 1, 1987; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-14-01. Performance standards - Casing and sealing of drilled holes - General requirements. ~~Each~~ The operator shall case, seal, or otherwise manage each drill hole, borehole, or well within the permit area shall be cased, sealed, or otherwise managed, as approved by the commission, to prevent toxic drainage from entering ground or surface waters, ~~to~~ minimize disturbance to the prevailing hydrologic balance, and ~~to~~ ensure the safety of people, livestock, fish and wildlife, and machinery in the permit ~~area~~ and adjacent ~~area~~. ~~If these openings are uncovered or exposed by surface mining activities within the permit area they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the commission areas. Unless approved for monitoring, the operator shall permanently close or otherwise acceptably manage openings uncovered or exposed by mining activities.~~ Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of section 69-05.2-16-16. This section does not apply to holes drilled and used solely for blasting.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-14-03. Performance standards - Casing and sealing of drilled holes - Permanent. When no longer needed for monitoring or other use approved by the commission upon a finding of no adverse environmental or health and safety effect, ~~or unless approved for transfer as a water well under section 69-05.2-16-16, each drill hole or borehole, and well shall be capped, sealed, backfilled, or otherwise properly managed, as required by the commission, under section 69-05.2-14-01.~~ Permanent closure measures shall be designed the operator shall permanently close drill holes and boreholes to prevent toxic drainage from entering ground or surface waters.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-15-02. Performance standards - Suitable plant growth material - Removal.

1. Timing. Suitable plant growth material ~~shall~~ 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 ~~shall~~ must be removed and segregated in two separate operations, unless otherwise approved by the commission. The removal and segregation of subsoil from an area ~~may~~ must not begin until the topsoil removal operation for that area has been completed and approved by the commission. If use of other suitable strata is approved as a supplement to suitable plant growth material, all such materials to be saved ~~shall~~ must be removed and segregated. Further disturbances which significantly alter an area ~~may~~ must not begin until the subsoil or 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 ~~shall~~ 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 ~~shall~~ 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~~ must 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 ~~shall~~ 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 ~~shall~~ 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.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-15-03. Performance standards - Suitable plant growth material - Storage and protection.

1. Suitable plant growth materials removed as required by section 69-05.2-15-02 ~~shall~~ must be stockpiled only when it is

impractical to promptly redistribute such materials on regraded areas.

2. Suitable plant growth material to be stockpiled ~~shall~~ must be selectively placed on a stable area within the permit area in such a manner that minimizes any loss or deterioration of such material. The stockpiled materials must be protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation. During the first normal period for favorable planting after stockpile placement, an effective cover of quick-growing nonnoxious plants must be established on the stockpiles. However, as an alternative to the establishment of a protective vegetative cover, the stockpiles may be mulched or otherwise protected using methods approved by the commission.
3. Unless approved by the commission, stockpiled suitable plant growth materials ~~shall~~ may not be moved until required for redistribution on a regraded area.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-15-04. Performance standards - Suitable plant growth material - Redistribution.

1. After final grading is approved ~~pursuant to~~ under section 69-05.2-21-06 and before the suitable plant growth material is replaced, regraded land ~~shall~~ must be scarified or otherwise treated, if necessary, to eliminate slippage surfaces or to promote root penetration.
2. Subsoil ~~shall~~ must then be redistributed as approved by the commission in a manner that:
 - a. Achieves an approximate uniform thickness consistent with the postmining land use and meets the requirements of subsection 4.
 - b. Prevents excess compaction of the spoil and subsoil.
3. Following commission approval of subsoil respreading, topsoil ~~shall~~ must be redistributed as approved by the commission in a manner that:
 - a. Achieves an approximate uniform thickness consistent with the postmining land use and meets the requirements of subsection 4.

- b. Prevents excess compaction of the suitable plant growth materials.
- 4. Amount of suitable plant growth materials to be redistributed.
 - a. In areas where the graded spoil materials occur:
 - (1) All suitable plant growth material inventoried and removed according to the soil survey and any other suitable strata required to satisfy section 69-05.2-21-03 must be uniformly redistributed; or
 - (2) The amount of redistributed suitable plant growth material must be based on the graded spoil characteristics as follows:

Suitable Plant Growth Material
Redistribution Thickness

Spoil Properties		Total Redistribution Thickness	
Texture	Sodium Adsorption Ratio (SAR)	Saturation Percentage (SP)	Average in Inches (Centimeters)
			(Topsoil Plus Subsoil)
Medium*	<12	***	24 (61)
Coarse**	<12	***	36 (91)
***	12 - 20	<95	36 (91)
***	12 - 20	≥95	42 (107)
***	> 20	***	48 (122)

- * Loam or finer
- ** Sandy loam or coarser
- *** Not applicable

- (a) The minimum thickness of redistributed suitable plant growth material in any random location must be within six inches [15.24 centimeters] of the average thickness required for an area based on the graded spoil characteristics as determined by representative sampling. However, the commission may approve redistribution thicknesses less than those listed in the table if chemical and physical analyses and any available field trials, greenhouse test results or current research findings demonstrate that the overburden materials are equal to or more suitable than the subsoil for sustaining vegetation. In addition, the commission may approve a lesser redistribution thickness if an insufficient amount of material exists based on the results of the soil survey and the

availability of other suitable strata pursuant to subdivision b of subsection 5 of section 69-05.2-15-02.

- (b) The texture, sodium adsorption ratio, and saturation percentage of the graded spoil materials will be determined by a commission evaluation of the premine overburden data, sample analyses of the graded spoil conducted by the operator, or by a combination of these methods.
 - (c) This paragraph is effective only for those areas disturbed prior to the year 1992.
- b. The amount of redistributed suitable plant growth materials in associated disturbance areas where graded spoil materials do not occur must be based on the amount removed ~~pursuant to~~ under subsection 2 of section 69-05.2-15-02.
- 5. Following the respreading of suitable plant growth materials, appropriate measures ~~shall~~ must be taken to protect the area from wind and water erosion.
 - 6. The suitable plant growth material and other suitable strata and substitutes saved from property owned by one party must be respread within the boundaries of that property if the surface ownership of the permit area is split between two or more parties, unless the parties otherwise agree.

History: Effective August 1, 1980; amended effective June 1, 1983; January 1, 1987; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-15-05. Performance standards - Suitable plant growth material - Nutrients and soil amendments. ~~Nutrients~~ The operator shall apply necessary nutrients and soil amendments in the amounts determined by soil tests shall be applied to the redistributed surface soil layer when necessary so that it supports the approved postmining land use and meets the revegetation requirements of chapter 69-05.2-22. All soil. Soil tests shall to identify nutrients, amendments, and rates must be performed by a qualified laboratory using standard methods.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-15-06. Performance standards - Suitable plant growth material - Stabilizing rills and gullies. When rills and gullies deeper than nine inches [22.86 centimeters] form in areas that have been regraded and respread with suitable plant growth material, the operator shall fill, grade, or otherwise stabilize the rills and gullies shall be filled, graded, or otherwise stabilized and reseed or replant the area reseeded or replanted according to chapter 69-05.2-22. The commission ~~shall~~ will require rills or gullies of lesser size to be filled, graded, or otherwise stabilized and the area reseeded or replanted if the rills or gullies would preclude the successful establishment of vegetation or the achievement of the postmining land use or if the rills or gullies may result in additional erosion and sedimentation.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-01. Performance standards - Hydrologic balance - General requirements.

1. Surface mining activities shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit area and adjacent area, in order to prevent long-term adverse changes in that balance that could result from those activities. The operator shall conduct surface coal mining and reclamation operations to:
 - a. Minimize disturbance of the hydrologic balance within the permit and adjacent areas and prevent material damage outside the permit area.
 - 2- b. Changes Minimize changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.
 - 3- c. Operations shall be conducted to minimize Minimize water pollution and, where necessary, use treatment methods shall be used to control water pollution.
 - a- (1) Each operator shall emphasize Emphasize mining and reclamation practices that prevent or minimize water pollution. Changes The operator shall use changes in drainage flow of drainage shall be used in preference to the use of water treatment facilities.
 - b- (2) Acceptable practices to control and minimize water pollution include, but are not limited to:
 - ↔ (a) Stabilizing disturbed areas through land shaping.

- ←2→ (b) Diverting runoff.
- ←3→ (c) Achieving quickly germinating and growing stands of temporary vegetation.
- ←4→ (d) Regulating channel velocity of water.
- ←5→ (e) Lining drainage channels with rock or vegetation.
- ←6→ (f) Mulching.
- ←7→ (g) Selectively placing and sealing toxic-forming materials.
- ←7→ (g) Selectively placing waste materials in backfill areas.

← (3) If the practices listed in subdivision b paragraph 2 are not adequate to meet the requirements of this article, the operator shall operate and maintain the necessary water treatment facilities for as long as treatment is required under this article.

2. Coal exploration activities which substantially disturb the land surface as determined by the state geologist under section 43-02-01-20 must comply with all applicable provisions of this chapter.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-02. Performance standards - Hydrologic balance - Compliance with state department of health and consolidated laboratories standards. Runoff water and pit water discharge ~~shall~~ must meet the water quality requirements of the North Dakota state department of health and consolidated laboratories, as well as ~~the requirements~~ those of this article. ~~No~~ The commission will not issue or revise a mining permit shall be issued or revised by the commission until the state department of health and consolidated laboratories has had an opportunity to review the applicable application information and plans pertaining to surface water quality. No rights under the mining permit shall be exercised until the necessary department of health and consolidated laboratories permits are obtained from the state department of health.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03, 38-14.1-42

Law Implemented: NDCC 38-14.1-21, 38-14.1-42

69-05.2-16-03. Performance standards - Hydrologic balance - Compliance with the standards of the state engineer. Any water impoundment, diversion, structure, or drainage ditch built as part of an approved mining and reclamation plan ~~shall~~ must be constructed in accordance with to meet the requirements of the North Dakota state engineer, as well as ~~the requirements~~ those of this article. ~~No~~ The commission will not issue or revise a mining permit ~~shall be issued or revised by the commission~~ until the state engineer has had an opportunity to review the applicable ~~application~~ information and plans ~~pertaining to water impoundments, diversions, drainage ditches, or other structures.~~ No rights under the mining permit shall be exercised until the necessary state engineer permits are obtained ~~from the state engineer.~~

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03, 38-14.1-42
Law Implemented: NDCC 38-14.1-24, 38-14.1-42

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, ~~shall~~ must be passed through a sedimentation pond ~~or,~~ a series of sedimentation ponds, or other treatment facility before leaving the permit area.
 - b. Sedimentation ponds and other treatment facilities ~~shall~~ 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 ~~those~~ 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 required by this section shall must be constructed in accordance with according to the plans in the approved permit before beginning any surface mining activities in the drainage area to be affected.
 - f. Where a sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the operator shall achieve the effluent limitations referenced in subdivision g for all of the mixed drainage when it leaves the permit area 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 shall be made in compliance must comply with all applicable state laws and rules and with the state department of health and consolidated laboratories effluent limitations for coal mining adopted by the North Dakota state department of health pursuant to in 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.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-05. Performance standards - Hydrologic balance - Surface water monitoring.

- 1. Surface water monitoring shall must be conducted in accordance with the monitoring program and based on the probable hydrologic consequences determination submitted under section 69-05.2-09-12 and approved by the commission 69-05.2-08-04. The commission shall will approve the nature of data that relate to the hydrologic reclamation plan in section 69-05.2-09-12, frequency of collection, and determine reporting requirements. Monitoring shall-

- a. For locations in surface water bodies, such as streams, lakes, and impoundments, monitoring must:
- (1) Be adequate to measure accurately and record water quantity and quality of the discharges from the permit area and to identify the extent to which mining impacts the affects water quality and quantity of water in the adjacent area. Water samples taken from all monitoring sites must be analyzed for the parameters specified in subdivision b of subsection 3 of section 69-05.2-08-07. Results must be submitted quarterly to the commission.
 - b. (2) Be conducted to assure reliable test data according to existing standard procedures and analytical methods for analysis.
- b. For point source discharges, monitoring must:
- (1) Be conducted according to state department of health and consolidated laboratories standards.
 - c. (2) Result in notifying the commission within five days in any cases in which analytical results of the sample collections indicate noncompliance with a permit condition or applicable standard. Where a North Dakota pollutant discharge elimination system permit effluent limitation noncompliance has occurred, the operator or permittee shall forward the analytical results concurrently with the written notice of noncompliance.
 - d. (3) Result in quarterly reports to the commission, to include analytical results from each sample taken during the quarter. Any sample results which indicate a permit violation ~~will~~ must be reported to the commission as specified in subdivision c. In those cases where the discharge for which water monitoring reports are required is also subject to regulation by a North Dakota pollutant discharge elimination system (NDPDES) permit issued in compliance with North Dakota Century Code chapter 61-28 and where such that permit includes provisions for equivalent reporting requirements and requires filing of the water monitoring reports within ninety days or less of sample collection, the operator or permittee shall submit to the commission on the same time schedule as required by the North Dakota pollutant discharge elimination system permit or within ninety days following sample collection, whichever is earlier, a copy of the completed North Dakota pollutant discharge elimination system reporting form filed to meet North Dakota pollutant

discharge elimination system permit requirements along with analytical results from each sample taken during the quarter.

2. If violation of a permit condition occurs, the operator shall, if appropriate, immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12.
3. After disturbed areas have been regraded and stabilized ~~in accordance with this article~~, the permittee shall continue to monitor surface water flow and quality within the permit and adjacent areas. Data from this monitoring may be used to demonstrate that the quality and quantity of runoff without treatment is consistent with the requirements ~~of this chapter~~ to minimize disturbance to the prevailing hydrologic balance and attain the approved postmining land use. ~~This~~ These data may also provide a basis for commission approval by the commission for removal of to remove water quality or flow control systems.
- ~~3-~~ 4. Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area ~~shall must~~ be properly installed, maintained, and operated and ~~shall must~~ be removed when no longer required.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-27

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 ~~away~~ from disturbed areas by means of temporary or permanent diversions, if required or approved by the commission ~~as necessary to minimize erosion; to reduce the volume of water to be treated; and to prevent or remove water from contact with toxic forming materials~~. The following requirements ~~shall must~~ be met for ~~all~~ diversions and for ~~all~~ collection drains ~~that are~~ used to transport water into ~~water~~ treatment facilities and for ~~all~~ diversions of overland and shallow ground water flow and ephemeral streams:

1. Temporary diversions ~~shall 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 ~~design of designing~~ collection drains used to transport water into ~~water~~ treatment facilities if:
 - a. The diversion ~~is to will~~ be ~~in use~~ 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 ~~shall~~ 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 ~~shall~~ must be constructed to pass safely the peak runoff from a ~~twenty-five year~~ one-hundred year, twenty-four-hour precipitation event, or a larger event as specified by the commission. Permanent diversions ~~shall~~ must be constructed with gently sloping banks ~~that are stabilized~~ by vegetation. Asphalt, concrete, or other similar linings ~~shall~~ must be used only when approved by the commission to prevent seepage or to provide stability.
 3. Diversions ~~shall~~ must be designed, constructed, and maintained ~~in a manner which prevents 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, ~~but are not limited to,~~ maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.
 4. No diversion shall be located ~~so as~~ 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 ~~shall~~ must be removed and the affected land ~~regraded, suitable plant growth material respread, and revegetated in accordance with the requirements of chapters 69-05.2-15, 69-05.2-21, and 69-05.2-22.~~ When reclaimed. The operator shall ~~reestablish ephemeral stream channels are restored, the operator shall reestablish the channel~~ to a longitudinal profile and cross section that approximate premining channel characteristics.
 6. Diversion design ~~shall~~ must incorporate the following:
 - a. ~~Channel~~ Design channel lining ~~shall~~ be designed using standard engineering practices to pass safely the design velocities.
 - b. Freeboard ~~shall~~ must be no less than three-tenths of a foot [9.14 centimeters]. ~~Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where~~ Design freeboard may be increased where the area protected is a critical area as determined by the commission, the design freeboard may be increased.

- c. Energy Protection for transition of flows and for critical areas such as swales and curves.
 - d. Install energy dissipators shall be installed 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.
 - d. e. Excess Dispose of excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with regrading according to chapter 69-05.2-18.
 - e. f. Suitable Handle suitable plant growth material shall be handled in compliance with chapter 69-05.2-15.
7. Diversions ~~shall~~ may not be constructed or operated to divert water into underground mines or an abandoned surface mine without the commission approval of the commission under section 69-05.2-16-18.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-07. Performance standards - Hydrologic balance - Stream channel diversions.

- 1. Flow from perennial and intermittent streams within the permit area may be diverted, if the diversions:
 - a. Are approved by the commission after making the findings ~~called for~~ in section 69-05.2-16-20;
 - b. Comply with other requirements of this chapter; ~~and~~
 - c. Comply with local and state laws and regulations; and
 - d. Are certified by a qualified registered professional engineer as being designed and constructed as required by this section.
- 2. When streamflow diversion is allowed ~~to be diverted~~, the ~~stream channel~~ diversion shall ~~must~~ be designed, constructed, and removed, in accordance with the following as follows:
 - a. The longitudinal profile of the stream, the channel, and the floodplain ~~shall~~ must be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions ~~shall~~

~~may not be in excess of requirements of exceed~~ state law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures ~~shall may~~ be used in diversions only when approved by the commission ~~as being necessary to control erosion~~. These structures ~~shall may~~ be approved for permanent diversions only where they are stable and will require infrequent maintenance.

- b. The combination of channel, bank, and floodplain configurations ~~shall must~~ be adequate to pass safely the peak runoff of a ten-year, twenty-four-hour precipitation event for temporary diversions, a one-hundred-year, twenty-four-hour precipitation event for permanent diversions, or larger events specified by the commission. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.
3. When no longer needed ~~to achieve the purpose for which they were authorized~~, all temporary stream channel diversions ~~shall must~~ be removed and the affected land ~~regraded, respread with suitable plant growth material, and revegetated, in accordance with chapters 69-05.2-15, 69-05.2-21, and 69-05.2-22~~ reclaimed. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion ~~shall must~~ be modified or removed to prevent overtopping or failure of the facilities. This requirement ~~shall does~~ not relieve the operator from ~~maintenance of maintaining~~ a water treatment facility otherwise required under this chapter or the permit.
 4. When permanent diversions are constructed or natural stream channels restored after being temporarily diverted, the operator shall:
 - a. Restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream.
 - b. Establish or restore the stream to its natural meandering shape at an environmentally acceptable gradient, as approved by the commission.
 - c. Establish or restore the stream to a longitudinal profile and cross section, including aquatic habitats (usually a pattern of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-42

69-05.2-16-08. Performance standards - Hydrologic balance - Sediment control measures.

1. Appropriate sediment control measures ~~shall~~ must be designed, constructed, and maintained using the best technology currently available to:
 - a. Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area.
 - b. Meet the more stringent of applicable state effluent limitations.
 - c. Minimize erosion to the extent possible.
 - d. Minimize the deposition of sediment on undisturbed areas.
2. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area ~~shall~~ must reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include, ~~but are not limited to:~~
 - a. Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation ~~as required in chapter 69-05.2-22.~~
 - b. Stabilizing the backfill material to promote a reduction in the rate and volume of runoff, ~~in accordance with the requirements of chapter 69-05.2-21.~~
 - c. Retaining sediment within disturbed areas.
 - d. Diverting runoff away from disturbed areas.
 - e. Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion.
 - f. Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment.
 - g. Treating with chemicals.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

1. General requirements. Sedimentation ponds ~~shall~~ must be used individually or in series and ~~shall~~:
 - a. Be constructed before any disturbance of the undisturbed area to be drained into the pond.
 - b. Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the commission.
 - c. Meet all the criteria of this section.
2. Sediment storage volume. Sedimentation ponds ~~shall~~ must provide a minimum adequate sediment storage volume equal to the accumulated sediment volume from the drainage area to the pond for a minimum of three years. Sediment storage volume ~~shall~~ must be determined using the universal soil loss equation, gully erosion rates, and the sediment delivery ratio converted to sediment volume, using either the sediment density or other empirical methods derived from regional sediment pond studies if approved by the commission.
3. Detention time. Sedimentation ponds ~~shall~~ must provide the required theoretical detention time for the water inflow or runoff entering the pond from a ten-year, twenty-four-hour precipitation event (design event). The theoretical detention time ~~shall~~ must be sufficient to achieve and maintain applicable effluent standards. The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times shall materials must be included in the permit application.
4. Dewatering. The stored water storage resulting from inflow ~~shall~~ must be removed by a nonclogging dewatering device or a conduit spillway approved by the commission, and ~~shall~~ have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device ~~shall~~ may not be located at a lower elevation than the maximum elevation of the sediment storage volume.
5. Each operator shall design, construct, and maintain sedimentation ponds to prevent short circuiting to the extent possible.
6. The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall do not relieve the operator from compliance

with applicable effluent limitations as contained in section 69-05.2-16-04, subject to the exemption contained therein.

7. There ~~shall~~ must be no outflow through the emergency spillway during the passage of the runoff resulting from the ten-year, twenty-four-hour precipitation event or lesser events through the sedimentation pond.
8. Sediment ~~shall~~ must be removed from sedimentation ponds when the volume of sediment accumulates to sixty percent of the design sediment volume or sooner if required by the commission on a periodic basis in order to maintain an adequate storage volume for the design event.
9. An appropriate combination of principal and emergency spillways ~~shall~~ or a single spillway must be provided to safely discharge the runoff from a twenty-five-year, ~~twenty-four-hour~~ six-hour precipitation event for a temporary impoundment, a fifty-year, six-hour precipitation event for a permanent impoundment, or a larger event specified by the commission. ~~Emergency~~ The spillways must be capable of safely discharging the required event when the impoundment is at high water elevation. Commission approval of open channel spillway grades and allowable velocities shall ~~must~~ be approved by the commission ~~obtained and velocities must be nonerodable.~~
10. The minimum elevation at the top of the settled embankment ~~shall~~ must be one foot [30.48 centimeters] above the surface water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this ~~one foot [30.48 centimeters]~~ minimum elevation requirement ~~shall~~ applies at all times, ~~including the period after settlement.~~
11. The constructed height of the dam ~~shall~~ must be increased a minimum of five percent over the design height to allow for settlement, unless it has been demonstrated to the commission that the material used and the design will ensure against ~~all~~ settlement.
12. The minimum top width of the embankment ~~shall~~ may not be less than the quotient of $(H+35)/5$, where H is the height, in feet, or $(H+10.7)/5$, where H is the height, in meters, of the embankment as measured from the upstream toe of the embankment.
13. The combined upstream and downstream side slopes of the settled embankment ~~shall~~ may not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes ~~shall~~ must be designed to be stable in ~~all~~ cases, even if flatter side slopes are required.

14. The ~~embankment~~ foundation area ~~shall~~ must be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h, and the entire foundation surface scarified. Cutoff trenches must be installed if necessary to ensure stability.
15. The fill material ~~shall~~ must be free of sod, large roots, other large pieces of vegetative matter, and frozen soil, and in no case shall coal processing waste be used.
16. The placing and spreading of fill material ~~shall~~ must be started at the lowest point of the foundation. The fill ~~shall~~ must be brought up in horizontal layers of such in the thicknesses ~~as are~~ required to facilitate compaction and meet the design requirements of this section. Compaction ~~shall~~ must be conducted as specified in the approved design ~~approved~~ by the commission.
17. If a proposed impoundment can impound water to an elevation of five feet [1.52 meters] or more above the upstream toe of the structure and can have a storage volume greater than twenty acre-feet [24669.64 cubic meters], or can impound water to an elevation of twenty feet [6.10 meters] or more above the upstream toe of the structure, the following additional requirements ~~shall~~ must be met:
 - a. An appropriate combination of principal and emergency spillways ~~shall~~ must be provided to safely discharge the runoff ~~resulting~~ from a one-hundred-year, six-hour precipitation event, or a larger event as specified by the commission.
 - b. The embankment ~~shall~~ must be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the commission ~~to ensure stability.~~
 - c. Appropriate barriers ~~shall~~ must be provided to control seepage along conduits that extend through the embankment.
 - d. The criteria of the mine safety and health administration as published in 30 CFR 77.216 ~~shall~~ must be met, and a copy of the plan sent to the district manager of the United States mine safety and health administration under that title submitted to the commission as part of the permit application.
18. Each pond ~~shall, upon construction,~~ must be certified by a qualified registered professional engineer experienced in the design of impoundments, as having been constructed as designed and as approved in the mining and reclamation plan. In addition, all dams and embankments meeting the criteria of subsection 17 ~~shall~~ must be certified annually as having been maintained to comply with the approved plan. The

certification ~~shall~~ must meet all applicable requirements of the state engineer.

19. The ~~entire~~ embankment, including the surrounding areas and diversion ditches disturbed or created by construction ~~shall~~, must be stabilized with respect to erosion and sudden drawdown by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the ~~embankment~~ where water will be impounded may be riprapped or otherwise stabilized to protect the embankment from erosion and sudden drawdown. Areas where the reestablishment of vegetation is not successful or where rills and gullies develop ~~shall~~ must be repaired and revegetated ~~in accordance with~~ according to section 69-05.2-15-06.
20. All ponds, including those not meeting the criteria of subsection 17 ~~shall~~, must be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications ~~shall be made in accordance with~~ according to 30 CFR 77.216-3, ~~except that dams.~~ Dams not meeting the criteria of subsection 17 may be examined on a semiannual basis.
21. Plans for any enlargement, reduction ~~in size~~, reconstruction, or other modification of dams or impoundments ~~shall~~ must be submitted to the commission. ~~Except where a modification is required~~ Commission approval of these plans is required before modification begins, unless a modification is necessary to eliminate an emergency condition constituting a hazard to public health, safety, or the environment; the commission shall approve the plans before modification begins.
22. Sedimentation ponds ~~shall~~ may not be removed until 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. When the ~~sedimentation~~ pond is removed, the affected land ~~shall~~ must be ~~regraded, respread with suitable plant growth material, and revegetated in accordance with chapters 69-05.2-15, 69-05.2-21, and 69-05.2-22 reclaimed,~~ unless the pond has been approved by the commission for retention as being compatible with the approved postmining land use under chapter 69-05.2-23. If the commission approves retention, the ~~sedimentation~~ pond ~~shall~~ must meet all the requirements for permanent impoundments of section 69-05.2-16-12.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; January 1, 1987; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-10. Performance standards - Hydrologic balance - Discharge structures. Discharges from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions ~~shall~~ must be controlled, where necessary using energy dissipators, riprap channels, surge ponds, and other devices to reduce erosion, ~~to~~ prevent deepening or enlargement of stream channels and ~~to~~ minimize disturbances to the hydrologic balance. Discharge structures ~~shall~~ must be designed according to standard engineering design procedures.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-11. Performance standards - Hydrologic balance - Toxic mine drainage. The discharge of toxic mine drainage into ground and surface water ~~shall~~ must be avoided by:

1. Identifying, burying, and treating where necessary, spoil which, in the judgment of the commission, may be detrimental to vegetation or ~~may adversely affect~~ water quality ~~if not treated or buried~~.
2. Preventing water from coming into contact with spoil material that causes toxic mine drainage ~~in accordance with~~ according to section 69-05.2-21-03, and other measures as required by the commission.
3. Burying or otherwise treating all spoil ~~material~~ that causes toxic mine drainage within thirty days after it is first exposed ~~on the minesite~~, or within a lesser period required by the commission, except that temporary storage ~~of the spoil~~ may be approved ~~by the commission~~ upon a finding that burial or treatment within thirty days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage ~~shall~~ must be limited to the period until burial or treatment first becomes feasible ~~and such~~. The spoil material shall must be placed on impermeable material and protected from erosion and contact with surface water.

History: Effective August 1, 1980; amended effective May 1, 1990.

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 ~~contained~~ 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 ~~must, at a minimum,~~ meet the requirements of subsections 9 through 21 of section 69-05.2-16-09.

2. Temporary impoundments of water in which the water is impounded by a dam ~~shall~~ 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 ~~shall~~ must have stable perimeter slopes ~~that are stable and shall not be~~ steeper than 1v:2h. Slopes ~~shall~~ must be designed to be stable ~~in all cases~~, even if flatter side slopes are required. Where surface runoff enters the impoundment area, the side slope ~~shall~~ must be protected against erosion.
4. All dams and embankments ~~shall~~ must be routinely maintained during the mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways ~~shall~~ must be cleaned. Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, ~~shall~~ 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.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-13. Performance standards - Hydrologic balance - Ground water protection.

1. Backfilled materials ~~shall~~ must be placed ~~so as~~ to minimize contamination of ground water systems with toxic or otherwise harmful mine drainage, ~~to~~ minimize adverse effects on ground water flow and quality, ~~to~~ minimize offsite effects, and ~~to~~ support approved postmining land uses.
2. To control the effects of mine drainage, pits, cuts, and other mine excavations or disturbances ~~shall~~ must be located, designed, constructed, and utilized ~~in such manner as~~ to prevent or control discharge of toxic or otherwise harmful

mine drainage waters into ground water systems and to prevent adverse impacts on ~~such ground water~~ those systems or on approved postmining land uses.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-14. Performance standards - Hydrologic balance - Ground water monitoring.

1. ~~Ground~~ The ground water monitoring shall be plan must be based on the probable hydrologic consequences determination and conducted in accordance with according to the monitoring program submitted under section 69-05.2-09-12 and approved by the commission. Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall must be monitored in a manner approved by the commission to determine the effects of surface mining activities on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems in the permit area and adjacent area. Ground water monitoring systems shall must be designed and maintained in a manner that will to allow the commission to substantiate the determination of cumulative impacts of all surface mining activities on the ground water hydrology of the permit area, and adjacent area, and general area areas.
2. When surface mining activities may affect the ground water systems which serve as aquifers that ensure the hydrologic balance of water use on or off the mine area, ground water levels and ground water quality ~~shall must~~ be periodically monitored. Monitoring ~~shall must~~ include measurements from a sufficient number of wells and mineralogical and chemical analyses of aquifer, overburden, and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring ~~shall must~~ be adequate to plan for modification of surface mining activities, if necessary, to minimize disturbance of the prevailing hydrologic balance.
3. Ground water monitoring data must be submitted to the commission every three months or more frequently as prescribed by the commission. Monitoring reports must include analytical results from each sample taken during the reporting period. When the analysis of any ground water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the commission and immediately take the actions provided for in subdivision a of subsection 3 of section 69-05.2-10-05 and subsection 2 of section 69-05.2-09-12.

4. As specified and approved by the commission, the operator or permittee shall conduct additional hydrologic tests, including drilling, infiltration tests, and aquifer tests and ~~shall~~ submit the results to the commission, to demonstrate compliance with this chapter.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-27

69-05.2-16-15. Performance standards - Hydrologic balance - Protection of ground water recharge capacity. Surface mining activities ~~shall be conducted in a manner that facilitates reclamation which will~~ must restore approximate premining recharge capacity, through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, ~~to transmit water to the ground water system.~~ ~~The recharge capacity shall be restored to a condition which:~~

1. Supports the approved postmining land use;
2. Minimizes disturbances to the prevailing hydrologic balance in the mine plan area and in adjacent areas; and
3. Provides a rate of recharge that approximates the premining recharge rate.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-27

69-05.2-16-16. Performance standards - Hydrologic balance - Transfer of wells.

1. An exploratory or monitoring well may ~~only~~ be transferred by the permittee for further use as a water well with the prior approval of the commission. The permittee and the surface owner ~~of the lands where the well is located~~ shall jointly submit a written request to the commission for that approval.
2. Upon an approved transfer of a well, the transferee shall:
 - a. Assume primary liability for damages to persons or property from the well.
 - b. Plug the well when necessary, but in no case later than abandonment of the well.
 - c. Assume primary responsibility for compliance with chapter 69-05.2-14 with respect to the well.

3. Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under subsection 2, until release of the bond or other equivalent guarantee required by chapter 69-05.2-12, for the area in which the well is located.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-18. Performance standards - Hydrologic balance - Discharge of waters into an underground mine. Surface water ~~shall~~ must not be diverted or otherwise discharged into underground mine workings or abandoned surface mines, unless the operator or permittee demonstrates to the commission that the diversion or discharge will:

1. Abate water pollution or otherwise eliminate public hazards resulting from surface mining activities. Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area, and otherwise eliminate public hazards resulting from surface mining activities.
2. Not cause the discharge to result in or contribute to a violation of applicable water quality standards or effluent limitations.
3. ~~Minimize disturbance to the hydrologic balance.~~

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-20. Performance standards - Hydrologic balance - Stream buffer zones. A one hundred-foot [30.48-meter] buffer zone from perennial and intermittent streams may not be disturbed by surface mining activities unless:

1. No land within one hundred feet [30.48 meters] of a perennial or intermittent stream shall be disturbed by surface mining activities, except in accordance with sections 69-05.2-16-06 and 69-05.2-16-07, unless the commission, after consultation with the state engineer, specifically authorizes surface mining activities closer to or through such a stream upon finding: The stream is diverted according to section 69-05.2-16-06 or 69-05.2-16-07; and
 - a. ~~That the original stream channel will be restored; and~~
 - b. ~~During and after the mining, the water quantity and quality from the stream section within one hundred feet~~

~~{30.48 meters} of the surface mining activities will not be adversely affected.~~

2. The commission, after consulting the state engineer, specifically authorizes mining closer to or through the stream upon finding that during and after mining, the water quantity and quality or other environmental resources of the stream will not be adversely affected.
3. The area not to be disturbed ~~shall~~ must be designated a buffer zone and marked as specified in section 69-05.2-13-04.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-17-01. Performance standards - Use of explosives - General requirements.

1. ~~Each operator~~ Operators shall comply with all applicable local and state laws in the use of explosives.
2. Blasts that use more than five pounds [2.27 kilograms] of explosive or blasting agent ~~shall~~ must be conducted according to the schedule required by section 69-05.2-17-03.
3. ~~No later than twelve months after the effective date of chapter 69-05.2-31, all~~ All blasting operations must be conducted under the direction of a certified blaster. ~~Before that time, all blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved and are currently authorized by the commission to conduct those operations.~~ Each person responsible for blasting operations shall possess a valid certification as required by North Dakota Century Code section 38-14.1-24.
4. ~~Certificates of blaster certification~~ Blaster certificates must be carried by blasters or ~~must~~ be on file at the mine office during blasting operations.
5. A blaster and at least one other person shall be present at the firing of a blast.
6. Persons responsible for blasting operations at a blasting site shall be familiar with the blasting plan and site-specific performance standards, and give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.
7. Blast design.

- a. An anticipated blast design must be submitted to the commission if blasting operations will be conducted within:
- (1) One thousand feet [304.8 meters] of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or
 - (2) Five hundred feet [152.4 meters] of an active or abandoned underground mine.
- b. The blast design may be presented as part of the permit application or at a time, before the blast, approved by the commission.
- c. The blast design must contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of the structures to be protected as well as a discussion of the design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground vibration standards in section 69-05.2-17-05.
- d. The blast design must be prepared and signed by a certified blaster.
- e. The commission may require changes to the design submitted.

History: Effective August 1, 1980; amended effective April 1, 1985; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-17-02. Performance standards - Use of explosives - Preblasting survey.

1. Each operator shall notify in writing, at least thirty days before blasting, all residents and owners of manmade dwellings or structures located within one-half mile [0.85 kilometers] of the permit area how to request a preblasting survey.
2. On request to the commission by a resident or owner of a dwelling or structure ~~that is~~ located within one-half mile [0.85 kilometers] of any part of the permit area, the operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly submit a report of the survey to the commission and to the person requesting the survey. If a structure is renovated or added to subsequent to a preblasting survey, then upon request to the commission, a survey of such

additions and renovations shall be performed in accordance with this section requester. Any preblasting survey requested more than ten days before blasting must be completed before blasting is initiated. Additions or renovations to a surveyed structure must be surveyed upon request to the commission.

- ~~2-~~ 3. The survey ~~shall~~ must determine the condition of the dwelling or structure and document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems ~~shall~~ must be limited to surface condition and other readily available data. Special attention ~~shall~~ must be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.
- ~~3-~~ 4. The written survey report of the survey ~~shall~~ must be prepared and signed by the person who conducted ~~the survey~~ it. The report may ~~include recommendations of any~~ recommend special conditions or proposed adjustments to the blasting procedure which should be incorporated into the blasting plan ~~to prevent damage.~~ If the person who requested the survey disagrees with the results of the survey, that person may notify, in writing, both the permittee and the commission of the specific areas of disagreement. The requester may notify the permittee and commission in writing of specific areas of disagreement with the survey results.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-17-03. Performance standards - Use of explosives - Public notice of blasting schedule.

1. Blasting schedule publication. Each operator shall:
 - a. ~~Each operator shall publish~~ Publish the blasting schedule required by subdivision a of subsection 13 of North Dakota Century Code section 38-14.1-24 at least ten days, but not more than twenty days, before beginning a blasting program in which blasts that use more than five pounds [2.27 kilograms] of explosive or blasting agent are detonated.
 - b. ~~Copies~~ Distribute copies of the schedule ~~shall be distributed by mail to local governments and, public utilities.~~ Copies sent to residents pursuant to subdivision a of subsection 13 of North Dakota Century Code section 38-14.1-24 may be delivered and shall be accompanied by information on how to request a preblasting survey, and each residence within one-half mile [0.85

kilometers] of the blasting site described in the schedule.

c. ~~The operator shall republish~~ Republish and redistribute the schedule every twelve months, or more frequently if necessary to meet the requirements of subsection 2.

d. Republish and redistribute a revised blasting schedule at least ten days but not more than twenty days before blasting whenever the area covered by the schedule changes or the actual time periods for blasting significantly differ from the prior announcement.

2. Blasting schedule contents:

a. A ~~blasting~~ schedule ~~shall~~ may not be so general as to cover the entire permit area or all working hours, but ~~shall~~ identify as accurately as possible the location of the blasting sites and the ~~time~~ periods when blasting will occur.

b. The blasting schedule ~~shall~~ must contain at a minimum:

(1) Identification of the specific areas in which blasting will take place. ~~Each specific blasting area described shall be reasonably compact and not larger than three hundred acres [121.4] hectares].~~

(2) Days and ~~time~~ periods when explosives are to be detonated. ~~These periods shall not exceed an aggregate of four hours in any one day.~~

(3) ~~to be~~ Methods used to control access to the blasting area.

(4) Types of audible warnings and all-clear signals ~~to be~~ used before and after blasting.

(5) A description of unavoidable hazardous situations referred to in section 69-05.2-17-05 ~~which have been~~ approved by the commission for blasting at times other than those ~~described~~ in the schedule.

3. ~~Any revisions~~ Revisions to the blasting notices ~~from that specified in the permit application shall~~ must be submitted to the commission.

4. ~~For the purposes of this section, the permit area does not include haul or access roads, coal preparation and loading facilities, and transportation facilities between coal excavation areas and coal preparation or loading facilities, if blasting is not conducted in those areas~~ The commission may limit the area covered, timing, and sequence of blasting as

listed in the schedule if the limitations are necessary and reasonable to protect public health and safety or welfare.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-17-04. Performance standards - Use of explosives - Public notice of changes to blasting schedules.

1. Before blasting in areas or at times not in a previous schedule, the operator shall prepare a revised blasting schedule according to the procedures contained in subsections 1 and 2 of section ~~69-05.2-17-03~~ and subdivision a of subsection 13 of North Dakota Century Code section ~~38-14.1-24~~. Where notice has previously been mailed or delivered to a resident under subsection 1 of section ~~69-05.2-17-03~~ with advice on how to request a preblasting survey, the notice of change need not include information regarding preblasting surveys.
2. If there is a substantial pattern of deviation from the published blasting schedule as evidenced by the absence of blasting during scheduled periods, the commission may require that the operator prepare a revised blasting schedule according to the procedures in subsection 1. Repealed effective May 1, 1990.

History: Effective August 1, 1980.

General Authority: NDCC ~~38-14.1-03~~

Law Implemented: NDCC ~~38-14.1-24~~

69-05.2-17-05. Performance standards - Use of explosives - Surface blasting procedures.

1. All blasting ~~shall~~ must be conducted between sunrise and sunset.
 - a. The commission may specify more restrictive ~~time periods~~ times based on public requests or other relevant information in order to adequately protect the public from adverse noise.
 - b. Blasting may, however, be conducted between sunset and sunrise if:
 - (1) A blast ~~that has been~~ prepared during the afternoon must be delayed due to ~~the occurrence of~~ an unavoidable hazardous condition and cannot be safely delayed until the next day ~~because a potential safety~~

hazard could result that cannot be adequately mitigated;

- (2) In addition to the required warning signals, oral notices are provided to persons within one-half mile [0.85 kilometers] of the blasting site; and
 - (3) A The operator files a complete written report of blasting at night is filed by the operator with the commission not later than within three days after the night blasting. The report shall must include a detailed description in detail of the reasons for the delay in blasting, including why the blast could not be held over until the next day, when the blast was actually conducted, the warning notices given, and a copy of the blast report required by section 69-05.2-17-07.
2. Blasting shall must be conducted at the scheduled times announced in the blasting schedule, except in those unavoidable hazardous situations, previously approved by the commission in the permit application, where operator or public safety require unscheduled detonation.
 3. Warning and all-clear signals of different character that are audible within a range of one-half mile [0.85 kilometers] from the point of the blast shall must be given. Each person within the permit area and each person who resides or regularly works within one-half mile [0.85 kilometers] of the permit area shall must be notified of the meaning of the signals through appropriate instructions. These instructions shall be periodically delivered or otherwise communicated in a manner which can be reasonably expected to inform such persons of the meaning of the signals. Each operator shall maintain signs in accordance with Recipients must be periodically and clearly informed of the meaning of the signals. Signs must be maintained according to subsection 6 of section 69-05.2-13-04.
 4. Access to an area possibly subject to flyrock from blasting shall must be regulated to protect the public and livestock. Access to the area shall must be controlled to prevent the presence of livestock or unauthorized personnel during blasting and until an authorized representative of the operator has reasonably determined that:
 - a. That There are no unusual circumstances, such as imminent slides or undetonated charges, exist; and
 - b. That access Access to and travel in or through the area can be safely resumed.
 5. Airblast shall must be controlled so that it does not exceed the values specified in this subsection at any dwelling,

public building, school, church, or commercial or institutional structure, unless ~~such~~ the structure is owned by the operator or permittee and is not leased to any other person. If a building owned by the operator or permittee is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this subsection.

Lower frequency limit of measuring system, Hz (±3dB)	Maximum level in dB
0.1 Hz or lower - flat response . . .	+35 <u>134</u> peak.
2 Hz or lower - flat response . . .	+32 <u>133</u> peak.
6 Hz or lower - flat response . . .	+30 <u>129</u> peak.
C-weighted, slow response	+09 <u>105</u> peak dBC.

- a. In all cases except the C-weighted, slow response, the measuring systems used ~~shall~~ must have a flat frequency response of at least two hundred Hz at the upper end. The C-weighted ~~shall~~ case must be measured with a type 1 sound level meter that meets the standard American national standards institute (ANSI) S1.4-1971 specifications.
 - b. The person who conducts blasting may satisfy the provisions of this subsection by meeting any of the four specifications in the chart in this subsection.
 - c. The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The commission may require an airblast measurement of any or all blasts, and may specify the location of ~~such~~ the measurements.
 - d. If necessary to prevent damage, the commission will specify lower maximum allowable airblast levels than those of this subsection for use in the vicinity of a specific blasting operation.
6. Except where lesser distances are approved by the commission based upon a preblasting survey, seismic investigation, or other appropriate investigation, blasting shall not be conducted:
- a. Within five hundred feet [~~152.40~~ meters] of any occupied dwelling, nor within three hundred feet [~~91.44~~ meters] of any public building, school, church, community, or institutional building, nor
 - b. Within five hundred feet [~~152.40~~ meters] of facilities including, but not limited to, disposal wells, petroleum

or gas storage facilities, municipal water storage facilities, fluid transmission pipelines, gas or oil collection lines, or water and sewage lines.

7. Flyrock, including blasted material traveling along the ground, shall may not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of property owned or leased by the permittee, or beyond the area of regulated access required under subsection 4.
8. In all blasting operations, except as otherwise authorized in this section, the maximum peak particle velocity shall not exceed one inch [2.54 centimeters] per second at the location of any dwelling, public building, school, church, or commercial or institutional building. Peak particle velocities shall be recorded in three mutually perpendicular directions. The maximum peak particle velocity shall be the largest of any of the three measurements. The commission may reduce the maximum peak particle velocity allowed, if the commission determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts, or other factors.
9. If blasting is conducted to prevent changes in the course, channel, or availability of ground or surface water outside the permit area, then the maximum peak particle velocity limitation of subsection 8 shall not apply at the following locations:
 - a. At structures owned by the operator or permittee, and not leased to another party; and
 - b. At structures owned by the operator or permittee, and leased to another party, if a written waiver by the lessee is submitted to the commission prior to blasting.
10. The maximum weight of explosives to be detonated within any eight millisecond period may be determined by the formula:

$$W=(D/60)^2$$

where W = the maximum weight of explosives, in pounds, that can be detonated in any eight millisecond period, and D = the distance, in feet, from the blast to the nearest dwelling, school, church, or commercial or institutional building. If blasting is conducted in accordance with this formula, the peak particle velocity shall be deemed to be within the one inch [2.54 centimeters] per second limit. For distances between three hundred feet [91.44 meters] and five thousand feet [1524.00 meters], solution of the formula results in the following maximum weights:

Distance (D)		Maximum weight (W)	
Feet	{Meters}	Pounds	{Kilograms}
300	{91.44}	25	{11.34}
350	{106.68}	34	{15.42}
400	{121.92}	44	{19.96}
500	{152.40}	69	{31.30}
600	{182.88}	100	{45.36}
700	{213.36}	136	{61.69}
800	{243.84}	178	{80.74}
900	{274.32}	225	{102.06}
1,000	{304.80}	278	{126.10}
1,100	{335.28}	336	{152.41}
1,200	{365.76}	400	{181.44}
1,300	{396.24}	469	{212.73}
1,400	{426.72}	544	{246.75}
1,500	{457.20}	625	{283.50}
1,600	{487.68}	711	{322.50}
1,700	{518.16}	803	{364.23}
1,800	{548.64}	900	{408.23}
1,900	{579.12}	1,002	{454.50}
2,000	{609.60}	1,111	{503.94}
2,500	{762.00}	1,736	{787.44}
3,000	{914.40}	2,500	{1133.98}
3,500	{1066.80}	3,403	{1543.57}
4,000	{1219.20}	4,444	{2015.76}
4,500	{1371.60}	5,625	{2551.46}
5,000	{1524.00}	6,944	{3149.74}

7. Ground vibrations.

- a. In all blasting operations, except as authorized in subdivision e, the maximum ground vibration may not exceed the values approved in the blasting plan. The maximum ground vibration for structures listed in subdivision b must be established according to the maximum peak particle velocity limits of subdivision b, the scaled-distance equation of subdivision c, or by the commission under subdivision d. All structures in the vicinity of the blasting area not listed in subdivision b must be protected from damage by a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the commission.
- b. The maximum ground vibration may not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area.

Distance (D), from the Maximum allowable Scaled-distance

<u>blasting site, in feet</u>	<u>peak particle velocity (V_{max}) for ground vibration, in inches/second</u>	<u>factor to be applied without seismic monitoring (D_s)</u>
<u>0 to 300</u>	<u>1.25</u>	<u>50</u>
<u>301 to 5000</u>	<u>1.00</u>	<u>55</u>
<u>5001 and beyond</u>	<u>0.75</u>	<u>65</u>

A seismographic record must be provided for each blast.

c. Scaled-distance equation.

- (1) An operator may use the scaled-distance equation, $W=(D/D_s)^2$, to determine the allowable charge weight of explosives to be detonated in any eight-millisecond period without seismic monitoring, where W = the maximum weight of explosives in pounds; D = the distance, in feet, from the blast site to the nearest protected structure; and D_s = the scaled-distance factor, which may initially be approved by the commission using the values for scaled-distance factor listed in paragraph b.
- (2) The development of a modified scaled-distance factor may be authorized by the commission on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The factor must ensure that the particle velocity will not exceed the prescribed maximum allowable peak particle velocity of paragraph b at a ninety-five percent confidence level.

d. The maximum allowable ground vibration will be reduced by the commission beyond the limits otherwise provided by this section if determined necessary to provide damage protection.

e. The maximum airblast and ground-vibration standards of this subsection do not apply at structures owned by the permittee and:

- (1) Not leased to another person.
- (2) Leased to another person if a written waiver by the lessee is submitted to the commission before blasting.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-17-06. Performance standards - Use of explosives - Seismographic measurements. The commission may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

- 1- Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of one inch {2.54 centimeters} per second is not exceeded, the formula in subsection 10 of section 69-05.2-17-05 need not be used. If that formula is not used by the operator, a seismograph record shall be obtained for each shot.
- 2- The use of a modified formula to determine maximum weight of explosives per delay for blasting operations at a particular site, may be approved by the commission, on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. In no case shall the commission approve the use of a modified formula where the peak particle velocity limit of one inch {2.54 centimeters} per second required in subsection 8 of section 69-05.2-17-05 would be exceeded.
- 3- The commission may require a seismograph record of any or all blasts and may specify the location at which such measurements are to be taken.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-17-07. Performance standards - Use of explosives - Records of blasting operations. A log of each blast, including any seismograph reports, ~~shall~~ must be retained at the minesite ~~in accordance with the provisions of subdivision b of~~ under subsection 13 of North Dakota Century Code section 38-14.1-24. The log ~~shall~~ must contain ~~all of the following information:~~

1. Name of the operator ~~conducting the blast.~~
2. Location, date, and time of blast.
3. Name, signature, and ~~license~~ certificate number of blaster-in-charge.

4. Direction and distance, in feet [meters], to nearest dwelling, school, church, or commercial or institutional building:
 - a. Not located in the permit area; or
 - b. Not owned or leased by the person who conducts the surface mining activities.
5. Weather conditions, including temperature, wind direction and approximate velocity.
6. Type of material blasted.
7. ~~Number of holes, burden, and spacing.~~
- ~~8.~~ Diameter and depth of holes.
- ~~9.~~ 8. Types of explosives used.
- ~~10.~~ 9. Total weight of explosives used per hole.
- ~~11.~~ 10. Maximum weight of explosives detonated within any eight-millisecond period.
- ~~12.~~ 11. Maximum number of holes detonated within any eight-millisecond period.
- ~~13.~~ 12. Initiation system.
- ~~14.~~ 13. Type and length of stemming.
- ~~15.~~ 14. Mats or other protections used.
- ~~16.~~ ~~Type of delay detonator and delay periods used.~~
- ~~17.~~ 15. Sketch of the ~~delay~~ blast pattern including number of holes, burden, spacing, decks, and delay pattern.
- ~~18.~~ ~~Number of persons in the blasting crew.~~
- ~~19.~~ 16. Seismograph ~~reports~~ and airblast records, where required, ~~which shall include~~ including:
 - a. The calibration signal of the gain setting.
 - b. Seismographic reading, including exact location of seismograph and, its distance from the blast, the date and time of the blast, and the vibration levels recorded.
 - c. Name of the person taking the seismograph reading.
 - d. Airblast levels recorded.

- e. Name of the person and firm analyzing the seismograph report.

17. Reasons and conditions for each unscheduled blast.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-18-01. Performance standards - Disposal of excess spoil - Requirements. In addition to the requirements of satisfying subsection 19 of North Dakota Century Code section 38-14.1-24, the following requirements for disposal of excess spoil shall be met the operator shall:

1. Excess Place excess spoil from the initial pit and excess spoil not needed to meet the grading requirements of section 69-05.2-21-02 within the area where overburden has been removed shall be placed in approved designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit. The spoil shall must be placed in a controlled manner to ensure:
 - a. That leachate and surface runoff from the disposal area will not degrade surface or ground waters or exceed the effluent limitations of section ~~69-05.2-16-04~~.
 - b. Stability of the disposal area.
 - c. That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.
2. Design the fill and appurtenant structures using current, prudent engineering practices and meet any design criteria established by the commission. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structure.
3. All Clear all vegetative and organic materials shall be removed from the disposal area and the handle suitable plant growth material shall be removed, segregated, and stored or replaced pursuant according to chapter 69-05.2-15. If approved by the commission, organic material may be used as mulch or may be included in the suitable plant growth material to control erosion, promote growth of vegetation, or increase the soil moisture retention of the soil.
- ~~3-~~ 4. Surface Divert surface water runoff from the area above the disposal area shall be diverted away from the disposal area

and into stabilized diversion channels designed to meet the requirements of sections 69-05.2-16-06 and 69-05.2-16-07.

5. Transport and place excess spoil in a controlled manner in horizontal lifts not exceeding four feet [1.22 meters] thick; concurrently compact to ensure mass stability and prevent mass movement during and after construction; grade so that surface and subsurface drainage is compatible with natural surroundings; and cover with suitable plant growth material. The commission may approve a design which employs other than four-foot [1.22-meter] lifts of excess spoil if it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure stability of the fill and meet all other applicable requirements.
- ~~4.~~ 6. Slope Provide slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with must meet the requirements of section 69-05.2-16-06. All disturbed areas, including diversion ditches that are not riprapped, shall must be vegetated upon completion of construction.
- ~~5.~~ 7. Drainage shall not be directed Not direct drainage over the outslope of the disposal area without commission approval of the commission.
- ~~6.~~ 8. The Locate the disposal area shall be located on the most naturally stable area available as approved by the commission. Where possible, fill materials suitable for disposal shall must be placed upon or above a natural terrace, bench, or berm if such the placement provides additional stability and prevents mass movement.
- ~~7.~~ 9. The Construct the disposal area shall be constructed to ensure a long-term static safety factor of 1.5.
- ~~8.~~ 10. No Not allow depressions or impoundments shall be allowed on the completed disposal area.
- ~~9.~~ 11. Terraces may be utilized Utilize terraces to control erosion and enhance stability if approved by the commission and consistent with section 69-05.2-21-02.
- ~~10.~~ 12. Inspect the disposal area as follows:
 - a. Each disposal area shall must be inspected for stability by a registered professional engineer at least quarterly throughout construction and during critical construction periods to assure. Critical construction periods include: foundation preparation including removal of all organic material and suitable plant growth material, placement of underdrainage systems, installation of surface drainage

systems, placement and compaction of fill materials, and ~~revegetation~~ the final graded and revegetated fill. The registered professional engineer shall provide a certified report to the commission within two weeks after each inspection that the disposal area has been constructed as specified in the design approved by the commission. The report must include appearances of instability, structural weakness, and other hazardous conditions.

- b. The certified report on the drainage system and protective filters must include color photographs taken during and after construction but before the underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase must be certified separately.
- c. Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with the excess spoil placement by the natural segregation of dumped materials, color photographs must be taken of the underdrain as the underdrain system is being formed.
- d. The photographs accompanying each certified report must be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.
- e. A copy of the report ~~shall~~ must be retained at the minesite.
- f. This requirement may be waived if the commission determines that the ~~inspection is~~ inspections are not necessary.

~~11-~~ 13. ~~An~~ Provide an underdrain system, if required by subsection 19 of North Dakota Century Code section 38-14.1-24, ~~shall be that is~~ protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods. Underdrains ~~shall~~ must consist of nondegradable, non-toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay, or shale.

~~12-~~ 14. ~~The~~ Ensure the foundation and abutments of the disposal area ~~shall be~~ are stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials ~~shall~~ must be performed ~~in order~~ to determine the design requirements for stability of the foundation. Where the slope of the disposal area exceeds 1v:5h (twenty percent), the existing ground ~~shall~~ must be

plowed, stepped, or keyed in a manner which increases the stability of the disposal area.

- ~~13.~~ 15. ~~The~~ Construct the outslope of the disposal area ~~shall to~~ not exceed 1v:2h (fifty percent) or ~~such a~~ lesser slope ~~as may be~~ required by the commission.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-19-02. Performance standards - Waste materials - Permanent disposal of coal wastes.

1. All coal processing waste and waste materials from coal utilization processes and coal conversion facilities ~~that are~~ to be permanently disposed of within a ~~surface coal mining and reclamation operations permit area~~ and that are required to be permitted ~~in accordance with~~ under the solid waste management rules of the North Dakota state department of health ~~shall~~ and consolidated laboratories must be disposed of as set forth by according to those rules and in accordance with the provisions of this chapter.
 - a. ~~When coal processing wastes are to be permanently disposed of within the permit area, the~~ The permittee or operator shall file application for and design the disposal site as required by the ~~North Dakota~~ state department of health and consolidated laboratories and ~~shall~~ concurrently submit a copy of ~~such the~~ application to the commission.
 - b. The permittee or operator shall also submit to the commission a permit revision that will incorporate the disposal activities into the operations and reclamation plan ~~for the permit area within which the disposal will occur.~~ The commission ~~shall will~~ not approve the permit revision until the ~~North Dakota~~ state department of health and consolidated laboratories issues a solid waste permit ~~for permanent disposal of coal processing wastes.~~
2. All ~~coal processing waste, ash and other waste materials from coal utilization processes and coal conversion facilities that are permanently disposed of within a surface coal mining and reclamation operations permit area shall~~ Waste materials covered by this section must be placed only in excavated pit areas approved by the commission. Prior to ~~the~~ disposal, the operator ~~must shall~~ demonstrate, using hydrologic, geotechnical, physical, and chemical analyses, that disposal of these materials will not:
 - a. Adversely affect ground water quality and flow;

- b. Create public health hazards; and
 - c. Cause instability in the disposal areas.
3. All permanent coal processing waste disposal facilities must be designed using current, prudent engineering practices and meet any design criteria established by the commission. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-19-03. Performance standards - Waste materials - Temporary disposal of coal processing wastes. The commission may approve the temporary disposal of coal processing wastes in areas other than excavated pits if the operator demonstrates that:

1. All surface drainage from the area above the ~~temporary~~ disposal site will be diverted as required by the commission.
2. Measures will be taken to minimize surface erosion at the disposal site.
3. All water discharged from the disposal site will comply with chapter 69-05.2-16.
4. No toxic mine drainage from the disposal site will degrade surface or ground water.
5. The disposal site will not create health hazards.
6. Coal processing waste fires can be extinguished in an approved manner.
7. The coal processing waste will be compacted to prevent spontaneous combustion.
8. Fugitive dust from the disposal site can be controlled.
9. The coal processing waste will be permanently disposed of in a timely manner in accordance with section 69-05.2-19-02.
10. The ~~temporary~~ disposal site will be restored in accordance with this article.
11. Dams and embankments constructed of or impounding coal processing waste as a temporary disposal method are in compliance with chapter 69-05.2-20.

12. All temporary coal processing waste disposal facilities are designed using current, prudent engineering practices and meet any design criteria established by the commission. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-19-04. Performance standards - Waste materials - Disposal of noncoal wastes.

1. All noncoal waste materials ~~that are~~ disposed of within a ~~surface coal mining and reclamation operations permit area~~ and that are required to be permitted ~~in accordance with~~ under solid waste management rules of the ~~North Dakota~~ state department of health ~~shall and consolidated laboratories must~~ be disposed of ~~as set forth in~~ according to those rules and ~~in accordance with the provisions of this chapter.~~ Before the ~~commencement of~~ disposal operations ~~begin~~, the commission ~~shall~~ must be advised of plans to develop or modify a noncoal waste disposal site ~~located within a surface coal mining and reclamation operations permit area.~~
2. Noncoal wastes including, ~~but not limited to,~~ grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber, and other combustibles generated during ~~surface mining activities~~ and noncoal waste materials from ~~other activities conducted~~ outside the permit area, such as municipal wastes, ~~shall~~ must be placed and stored in a controlled manner in a designated approved portion of the permit area ~~approved by the commission.~~ Placement and storage ~~shall~~ must ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.
3. ~~Final disposal of noncoal wastes shall be in a designated disposal site in the permit area.~~ Disposal sites ~~shall~~ must be designed and constructed with appropriate water barriers on the bottom and sides ~~of the designated site.~~ Wastes ~~shall~~ must be routinely compacted and covered to prevent combustion and windborne waste. When ~~the~~ disposal is completed, two feet [60.96 centimeters] of cover or ~~such a~~ greater thickness ~~as may be~~ required by the commission, ~~shall~~ must be placed over the site, slopes stabilized, suitable plant growth material respread and revegetation accomplished ~~in accordance with chapter 69-05.2-22.~~ Operation of the disposal site shall be

conducted in accordance. Site operation must comply with all local and state requirements.

4. At no time ~~shall~~ may any solid waste material be deposited at embankment or impoundment sites, nor ~~shall~~ may any excavation for solid waste disposal be located within eight feet [2.44 meters] of any coal outcrop or coal storage area.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-20-01. Performance standards - Dams and embankments constructed of or impounding coal processing waste - General requirements. Dams and embankments constructed of or impounding coal processing waste as a temporary disposal method ~~shall be in accordance~~ must comply with this chapter and permanent disposal of ~~such the~~ waste shall be in accordance must comply with section 69-05.2-19-02. Waste ~~shall may~~ not be used in the construction of to construct the dams and embankments unless it has been demonstrated to the commission that the stability of ~~such a the~~ structure conforms to the requirements of subsection 1 of section 69-05.2-20-03. It ~~shall~~ must also be demonstrated that the use of waste material will not have a detrimental effect on downstream water quality or the environment due to toxic seepage through the dam or embankment. All demonstrations ~~shall~~ must be ~~submitted to and~~ approved by the commission. Prior to commission approval of ~~such a structure~~, the state engineer ~~shall~~ will have an opportunity to review the plans and design of ~~such the~~ structures.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-25

69-05.2-20-02. Performance standards - Dams and embankments constructed of or impounding coal processing waste - Site preparation. Before coal processing waste is placed at a dam or embankment site:

1. All vegetative material ~~shall~~ must be cleared from the site, and suitable plant growth material ~~shall be~~ removed and stockpiled ~~in accordance with the requirements of~~ according to this article; and
2. Surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, ~~shall~~ must be diverted ~~away from the embankment~~ by diversion ditches that comply with the requirements of section 69-05.2-16-06. Adequate outlets for discharge from these diversions ~~shall be in accordance~~ must comply with section 69-05.2-16-10. Diversions ~~that are~~ designed to divert carry drainage from the upstream area away

from the impoundment area ~~shall~~ and runoff from the surface of the impoundment facility must be designed to carry the peak runoff from a one hundred-year, ~~twenty-four hour~~ six-hour precipitation event. The diversion ~~shall~~ must be maintained to prevent blockage, and the discharge ~~shall be in accordance~~ must comply with section 69-05.2-16-10. Sediment control measures ~~shall~~ must be provided at the discharge of each diversion ditch before entry into natural watercourses ~~in accordance with~~ according to chapter 69-05.2-16.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-25

69-05.2-20-03. Performance standards - Dams and embankments constructed of or impounding coal processing waste - Design and construction.

1. The design of each dam and embankment constructed of coal processing waste or intended to impound ~~such the~~ waste ~~shall~~ must comply with ~~the requirements of~~ subsections 9 through 21 of section 69-05.2-16-09, modified as follows:
 - a. The design freeboard between the lowest point on the embankment crest and the maximum water elevation ~~shall~~ must be at least three feet [91.44 centimeters].
 - b. The dam and embankment ~~shall~~ must have a minimum safety factor of 1.5 for the partial pool with steady seepage saturation conditions, and the seismic safety factor ~~shall~~ must be at least 1.2.
 - c. The dam or embankment foundation and abutments ~~shall~~ must be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing ~~shall~~ must be performed to determine the safety factors of the dam or embankment for all loading conditions appearing in subdivision b and for all increments of construction.
2. Spillways and outlet works ~~shall~~ must be designed to provide adequate protection against erosion and corrosion. Inlets ~~shall~~ must be protected against blockage.
3. Dams or embankments constructed of or impounding waste materials ~~shall~~ must be designed so that at least ninety percent of the water stored during the design precipitation event will be removed within a ten-day period.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-25

69-05.2-21-01. Performance standards - Backfilling and grading - Timing requirements.

1. Area surface mining with thin overburden. Rough backfilling and grading ~~shall~~ must occur in accordance with according to the time schedule approved by the commission, on the basis of the materials submitted under subsection 3 of section 69-05.2-09-11, ~~which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.~~
2. Area surface mining. Rough backfilling and grading ~~shall~~ must be completed within one hundred eighty days following coal removal and ~~shall~~ may not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The commission may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under subsection 3 of section 69-05.2-09-11, that additional time is necessary.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-02. Performance standards - Backfilling and grading - Grading requirements.

1. All disturbed areas ~~shall~~ must be backfilled and graded ~~in accordance with~~ according to subsection 3 of North Dakota Century Code section 38-14.1-24 so that they support the approved postmining land use, except that the commission may approve a different contour or topography if:
 - a. The different contour or topography is a lesser contour or topography consistent with the approximate original contour, with all highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist vegetation or as otherwise authorized pursuant to North Dakota Century Code chapter 38-14.1 or this article);
 - b. The permittee affirmatively demonstrates in the permit application that the lesser contour or topography is necessary to better achieve the postmining land use; and
 - c. All applicable performance standards of North Dakota Century Code section 38-14.1-24 and this article will be met.
2. In order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces

may be allowed, if approved by the commission and if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces ~~shall~~ must meet the following requirements:

- a. The width of the individual terrace bench ~~shall~~ must not exceed twenty feet [6.10 meters], unless specifically approved by the commission as necessary for stability, erosion control, or roads included in the approved postmining land use plan.
 - b. The vertical distance between terraces ~~shall~~ must be as specified by the commission, ~~to prevent excessive erosion and to provide long term stability.~~
 - c. The slope of the terrace outslope ~~shall~~ may not exceed 1v:2h (fifty percent). Highwalls ~~shall~~ may not be left as part of terraces.
 - d. Culverts and underground rock drains ~~shall~~ must be used on the terrace only when approved by the commission.
3. Small depressions may be constructed, if the depressions:
- a. Are approved by the commission to minimize erosion, conserve soil moisture, or promote vegetation;
 - b. Do not restrict normal access over the area;
 - c. Are not inappropriate substitutes for lower grades on the reclaimed lands; and
 - d. Do not adversely affect the intended postmining land use.
4. Disturbed areas must be backfilled and graded to minimize erosion and water pollution both on and off the site.
5. All final grading, spoil preparation of overburden before replacement of suitable plant growth material, and placement of suitable plant growth material shall placement must be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes conducted to minimize erosion and provides provide a minimum slippage surface for replacement of suitable plant growth material which will minimize slippage replacement.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-21-03. Performance standards - Backfilling and grading - Covering coal and toxic-forming materials. All exposed coal seams, and toxic-forming and combustible materials exposed, used, or produced during mining ~~shall~~ must be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with chapter 69-05.2-16, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990.

General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-21-04. Performance standards - Backfilling and grading - Thin overburden. The provisions of this section apply only to ~~those~~ surface mining activities where the final thickness of all available spoil and waste materials over the permit area is less than 0.8 of the initial thickness of the overburden and the coal prior to coal removal. The final thickness is the product of the overburden thickness prior to coal removal times the overburden swell factor. When ~~this~~ the demonstration is made that thin overburden exists over the permit area, in addition to meeting ~~the requirements of~~ subdivision b of subsection 3 of North Dakota Century Code section 38-14.1-24, the operator shall, ~~at a minimum,~~ meet the following standards:

1. Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire permit area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3 to provide adequate drainage and long-term stability of the regraded areas, and to cover all toxic-forming materials.
2. Eliminate highwalls by grading or backfilling to stable slopes not exceeding thirty-five percent, or ~~such~~ lesser slopes as the commission may specify to reduce erosion, ~~to~~ maintain the hydrologic balance, or ~~to~~ achieve the approved postmining land use.
3. Transport, backfill, grade, and revegetate ~~in accordance with chapter 69-05.2-22,~~ to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area.
4. Transport, backfill, and grade, to ensure that impoundments are constructed only where:

- a. It has been demonstrated to the commission that all requirements of chapter 69-05.2-16 have been met; and
- b. The impoundments have been approved by the commission as suitable for the approved postmining land use and **have been found to** meet the requirements of this article and all other applicable state laws and regulations.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-05. Performance standards - Backfilling and grading - Slippage and piping zones. The commission may require the operator to **make full use of** current research findings and the best technology currently available to minimize **the development of** subsurface piping in the **overburden spoil** and slippage at the suitable plant growth **material-overburden material spoil** interface **to ensure that the operator will achieve proper reclamation as required by this article.**

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-06. Performance standards - Backfilling and grading - Slope measurements.

1. After the disturbed area has been graded, the final graded slope shall be measured at sufficient locations to provide a contour map that will accurately show the postmining topography. The contour map shall be submitted as required by the commission for a determination that the grading requirements have been met prior to The permittee shall submit a postmining contour map to the commission for approval before spreading suitable plant growth materials. Along with the contour map, the permittee shall specify the thickness of topsoil and subsoil intended to be respread over the graded area.
2. The commission ~~shall~~ will approve or disapprove the postmining topography within thirty days and ~~shall~~ notify the permittee in writing of the decision. ~~If the commission disapproves the final graded postmining topography, the reasons shall be stated in the written notification to the permittee along with reasons for any disapproval.~~

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-21-07. Performance standards - Backfilling and grading - Stabilizing rills and gullies. When rills and gullies form in areas that have been regraded, the rills and gullies ~~shall~~ must be filled, graded, or otherwise stabilized as ~~may be~~ required by the commission prior to respreading suitable plant growth material or when necessary to minimize erosion of the regraded spoil ~~material~~.

History: Effective August 1, 1980 ; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-22-01. Performance standards - Revegetation - General requirements. The permittee shall establish a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area for all disturbed areas, except water areas, surface areas of roads, and other facilities that are approved as a part of the postmining land use, or shall plant species that will support the approved postmining land use. Species planted must be compatible with plant and animal species of the area, meet the requirements of applicable state and federal seed and introduced species laws, and must not be poisonous or noxious. The postmining vegetative cover ~~shall~~ must be capable of stabilizing the soil surface from erosion and ~~shall~~ will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the approved postmining land use when compared to the utility of vegetation existing prior to mining during each season of the year. If the postmining land use is cropland, planting of the crops normally grown will meet this requirement. The commission may approve the substitution of introduced species only if appropriate field trials have demonstrated that the introduced species are desirable and necessary to achieve the approved postmining land use. Lands that have been approved for postmining agricultural uses must be returned to productivity levels equal to or exceeding that of unmined agricultural lands in the surrounding area under equivalent management practices.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-22-02. Performance standards - Revegetation - Methods.

1. All revegetation ~~shall~~ must be carried out in compliance accordance with the approved reclamation plan and carried out in a manner that encourages a prompt vegetative cover and productivity levels compatible with the approved land use.
2. The permittee shall use technical publications or the results of laboratory and field tests approved by the commission to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-

~~regeneration of vegetation. The commission shall approve species selection and planting plans.~~

- ~~3-~~ When the approved postmining land use is tame pastureland, the permittee shall seed or plant species of introduced grasses and legumes adapted to the local site conditions and capable of supporting grazing and occasional haying under proper management.
- ~~4-~~ 3. When the approved postmining land use is native grassland, the species of grasses, legumes, forbs, half-shrubs, or shrubs ~~for seeding seeded or planting planted~~ and their pattern of distribution ~~shall~~ must be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with seasonal variety, succession, and regenerative capabilities native to the area.
- ~~5-~~ 4. ~~Where~~ When the approved postmining land use is woodland or fish and wildlife habitat where the vegetation type is woodland, the permittee shall plant woody species adapted for local site conditions and climate, in combination with a cover of grains, grasses, legumes, or forbs to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, and regenerative capabilities native to the area. ~~When planting woody species and the cover of grains, grasses, legumes, and forbs, the permittee shall utilize local and regional recommendations regarding species composition, spacing, and planting arrangement. Approval of species composition, minimum stocking, spacing and planting arrangements of trees, shrubs, half-shrubs, and ground cover will be based on local and regional recommendations following consultation with the state game and fish department, state forester, and the soil conservation service.~~
5. ~~When the approved postmining land use is shelterbelt, the permittee shall plant woody species adapted for local site conditions and climate. Understory vegetation must be controlled until it no longer interferes with the growth of woody species. The stocking of trees and shrubs must follow current standards and specifications developed by the soil conservation service for farmstead and field windbreaks in North Dakota or others approved by the commission.~~
6. ~~Where~~ When fish and wildlife habitat is ~~to be~~ included in the postmining land use, the permittee shall consult with appropriate state wildlife and land management agencies and shall select those plant species that will fulfill the needs of wildlife for food and cover. Plant groupings and water resources ~~shall~~ must be appropriately spaced and distributed.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-42

69-05.2-22-03. Performance standards - Revegetation - Use of introduced species. Introduced species may be substituted for native species only if approved by the commission; if appropriate field trials have demonstrated that the introduced species are desirable and necessary to achieve the approved postmining land use; if the introduced species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and if measures to establish permanent vegetation are included in the approved reclamation plan. Introduced species must be compatible with the plant and animal species of the region; must meet the requirements of applicable state seed or introduced species statutes; and must not be poisonous or noxious.

History: Effective August 1, 1980.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

Repealed effective May 1, 1990.

69-05.2-22-04. Performance standards - Revegetation - Timing. Seeding and planting of disturbed areas ~~shall~~ must be conducted during the first normal period for favorable planting conditions after suitable plant growth materials have been spread. The normal period for favorable planting ~~shall be~~ is that planting time generally accepted locally for the type of plant materials selected. ~~When necessary to control erosion, all disturbed areas which have been respread with suitable plant growth material shall be seeded as contemporaneously as practicable with the completion of respreading of suitable plant growth material, with a temporary cover of small grains, grasses, or legumes until an adequate permanent vegetative cover is established.~~

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

69-05.2-22-05. Performance standards - Revegetation - Mulching and other soil stabilizing practices.

1. ~~Suitable mulch~~ Mulching or other soil stabilizing practices ~~shall~~ must be used on all regraded and topsoiled areas to control erosion, promote germination of seeds, or increase the moisture-retention capacity of the soil. The commission may, on a case-by-case basis, suspend the requirement for mulch if the permittee can demonstrate that alternative procedures will achieve the requirements of section 69-05.2-22-07 and do not cause or contribute to air or water pollution.

2. When required by the commission, mulches ~~shall~~ must be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.
3. Annual grasses and grains may be used alone, ~~as in situ mulch,~~ or in conjunction with another mulch, when the commission determines that they will provide adequate soil erosion control and will later be replaced by species approved for the postmining land use.
4. ~~Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.~~

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-22-06. Performance standards - Revegetation - Grazing. Livestock grazing will not be allowed on revegetated land until the seedlings are established and can sustain managed grazing. The No grazing will be permitted unless the grazing and stocking capacity is agreed to by the commission, the permittee, and the landowner or the governmental land managing agency having jurisdiction over the surface shall agree on when the revegetated land is ready for livestock grazing and the stocking capacity of the revegetated land.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

1. Success of revegetation ~~shall~~ 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 ~~shall~~ must be comparable to that required for the approved postmining land use of the permit area. If standards are used, ~~the standards~~ they must be approved by the commission and the office of surface mining reclamation and enforcement, United States department of interior. Approved standards are in 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 ~~shall~~ will begin ~~after~~ the last year of 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 ~~shall~~ 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, ~~shall~~ will be determined for each postmining land use according to the following procedures:
 - a. For native grassland ~~and~~, tame pastureland, and fish and wildlife habitat where the vegetation type is grassland, ~~the~~ the ground cover on the permit area shall ~~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 ~~shall~~ must be perennial species ~~seeded or planted pursuant to the approved reclamation plan or other perennial species~~ not detrimental to the approved postmining land use.
 - b. For cropland, vegetation ~~shall~~ 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, ~~the~~ productivity on the permit area ~~shall~~ 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 ground cover shall be suitable for the postmining land use and shall be adequate to control erosion~~ 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 ~~shall~~ at the time of final bond release must be determined for each postmining land use according to the following ~~procedures~~:

- a. For native grassland ~~and tame pastureland~~, the following ~~requirement~~ must be achieved for the last two consecutive years of the responsibility period:
- (1) Ground cover and productivity of the permit area ~~shall must~~ be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence ~~for herbaceous vegetation and eighty percent statistical confidence for woody vegetation;~~ the approved standard; and
 - (2) ~~The diversity~~ Diversity, seasonality, and permanence of the vegetation of the permit area, ~~determined from the major species and groups;~~ shall 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 ~~shall~~ 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.
- ~~c.~~ d. For prime farmlands, crop production from the permit area ~~shall~~ 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.
- ~~d.~~ e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following ~~requirements~~ must be achieved during the last year of the responsibility period:
- (1) ~~The stocking of woody plants shall meet the standards described in section 69-05.2-22-08.~~ The number of woody plants established on the permit area shall must be equal to or greater than the stocking number of live woody plants of the same life form of the approved standard with ~~eighty~~ 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 eight growing seasons.
- (2) The ground cover ~~shall~~ must be equal to or greater than ~~seventy~~ ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and ~~shall~~ must be adequate to control erosion; and
- (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area ~~shall~~ must be evaluated on the basis of ~~the result which could reasonably be expected using the revegetation methods described in the reclamation plan~~ species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the last year of the responsibility period:
- (1) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and
- (2) 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 year 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 year 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.
- e. i. For previously mined areas that were not reclaimed to the requirements of this chapter, the ground cover of living plants ~~shall~~ may not be less than can be supported by the best available ~~soil~~ plant growth material in the reaffected area, ~~shall not be nor~~ shall not be less than the ground cover existing before redisturbance, ~~and shall be adequate to.~~ Adequate measures must be in place to control erosion, as determined and approved by the commission.

- f. For operations where the extended mining plan is less than one hundred acres [40.50 hectares], the methods and standards used to determine the success of revegetation may differ from those of this subsection and shall be approved by the commission.
5. 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 shall may not be less than required to control erosion. If the postmining land use is not implemented within two years after regrading is complete, the premining land use or other approved land use shall be implemented and the requirements of this section shall be met for the applicable land use.
6. 5. The 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, to identify conditions during the period of responsibility.
7. For purposes of this section, "herbaceous species" means grasses, grasslike plants, legumes, and nonleguminous forbs; "woody plants" means trees, shrubs, half-shrubs, and woody vines; and "ground cover" means the area of ground covered by vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-22-08. Performance standards - Revegetation - Tree and shrub stocking for woodlands.

1. The stocking of trees, shrubs, half-shrubs, and the ground cover established on the permit area shall utilize local and regional recommendations regarding species composition, spacing, and planting arrangement.
2. The cover of trees, shrubs, or half-shrubs established shall be sufficient for adequate use of the available growing space. Stocking, i.e., the number of stems per unit area, will be used to determine the degree to which space is occupied by well-distributed, countable trees, shrubs, or half-shrubs.

- a. Root crown or root sprouts over one foot {30.48 centimeters} in height shall count as one toward meeting the stocking requirements. Where multiple stems occur only the tallest stem will be counted.
- b. A countable tree, shrub, or half-shrub means one that can be used in calculating the degree of stocking under the following criteria:
 - (1) The tree, shrub, or half-shrub shall be in place at least two growing seasons;
 - (2) The tree, shrub, or half-shrub shall be alive and healthy; and
 - (3) The tree or shrub shall have at least one-third of its length in live crown.

History: Effective August 1, 1980.
 General Authority: NDCC 38-14.1-03
 Law Implemented: NDCC 38-14.1-24

Repealed effective May 1, 1990.

69-05.2-23-01. Performance standards - Postmining land use - Determining premining land use.

1. The postmining land use must be compared to those uses the land previously supported under proper management unless the land has been previously mined and not reclaimed. In that case, the postmining land use ~~shall~~ must be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas.
2. If the premining use of the land was changed within five years of beginning of mining, the comparison of postmining use to premining use ~~shall~~ must also include the historic use of the land preceding mining.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990.
 General Authority: NDCC 38-14.1-03, 38-14.1-24
 Law Implemented: NDCC 38-14.1-24

69-05.2-23-02. Performance standards - Postmining land use - Land use categories. Land use is categorized as follows:

1. Cropland.
2. Tame pastureland.

3. Native grassland.
4. Woodland.
5. Fish and wildlife habitat.
6. Developed water resources.
7. Recreation.
8. Residential.
9. Industrial and commercial.
10. Shelterbelts.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1990.

General Authority: NDCC 38-14.1-03, 38-14.1-24

Law Implemented: NDCC 38-14.1-24

69-05.2-25-01. Performance standards - Alluvial valley floors - Essential hydrologic functions.

1. The essential hydrologic functions of alluvial valley floors not within an affected area ~~shall~~ must be preserved by maintaining ~~those~~ the geologic, hydrologic, and biologic characteristics that support those functions.
2. Surface coal mining and reclamation operations ~~shall~~ must be conducted to reestablish, ~~throughout the mining and reclamation process,~~ the essential hydrologic functions of alluvial valley floors within an affected area. ~~These functions shall be reestablished~~ by reconstructing ~~those~~ the geologic, hydrologic, and biologic characteristics that support those functions.
3. The characteristics ~~that support the essential hydrologic functions of alluvial valley floors~~ are those identified in section ~~69-05.2-09-15~~ 69-05.2-09-16 and ~~those other geologic, hydrologic, or biologic characteristics~~ others identified during premining investigations or monitoring conducted during the ~~surface coal mining and reclamation~~ operation.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-24

69-05.2-25-02. Performance standards - Alluvial valley floors - Protection of agricultural uses. Surface coal mining and reclamation operations ~~shall~~ must be conducted to ensure that the agricultural

utility and the level of productivity of alluvial valley floors in affected areas are reestablished.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-24

69-05.2-25-03. Performance standards - Alluvial valley floors - Monitoring.

1. An environmental monitoring system ~~shall~~ must be installed, maintained, and operated by the permittee on all alluvial valley floors during ~~surface coal mining and reclamation~~ operations and continued until all bonds are released ~~in accordance with North Dakota Century Code section 38-14.1-17.~~ The monitoring system ~~shall~~ 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 being preserved.
 - b. The potential agricultural utility and production on the alluvial valley floor within the affected area has been reestablished.
 - c. The important characteristics supporting the essential hydrologic functions of an alluvial valley floor in the affected area have been reestablished ~~after mining.~~
 - 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 ~~shall~~ must be performed at adequate frequencies, to indicate long-term trends that could affect agricultural use of the alluvial valley floors.
3. Monitoring ~~shall~~ 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 ~~collected~~ and analyses ~~thereof~~ ~~shall~~ must be submitted to the commission according to the timetable approved in the permit application. Hydrologic monitoring and reporting, ~~at a minimum,~~ shall comply with ~~the requirements of~~ sections 69-05.2-16-05 and 69-05.2-16-14.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-24, 38-14.1-27

69-05.2-25-04. Performance standards - Alluvial valley floors - Protection of farming and water supplies.

1. If environmental monitoring shows that a **surface coal** mining operation is interrupting, discontinuing, or precluding farming on alluvial valley floors, the operation **shall must** cease until remedial measures are taken by the operator. The remedial measures **shall must** be approved by the commission prior to the resumption of mining.
2. If environmental monitoring shows that the **surface coal** mining operation is causing material damage to water that supplies alluvial valley floors, the **mining operations shall operation must** cease until remedial measures are taken by the operator or permittee. The remedial measures shall be approved by the commission prior to the resumption of mining operations. Commission approval of the remedial measures is required before mining may be resumed.
3. The provisions of paragraphs Paragraphs 1 and 2 of subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21 shall do not apply to those lands which were identified in a reclamation plan approved by the commission prior to July 1, 1979, for any **surface coal mining and reclamation** 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 **by the commission** to conduct **surface coal mining and reclamation** operations within an alluvial valley floor.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-24, 38-14.1-28

69-05.2-26-02. Performance standards - Prime farmland - Soil removal. For all prime farmlands to be mined, in addition to **meeting the requirements of satisfying** subdivisions a and b of subsection 6 of North Dakota Century Code section 38-14.1-24 and the applicable requirements of section 69-05.2-15-02, the operator or permittee shall ensure that the minimum thickness of soil and soil material to be removed for use in reconstruction of prime farmland soils **shall be is** sufficient to meet the soil replacement requirements of section 69-05.2-26-04.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-26-03. Performance standards - Prime farmland - Soil stockpiling. If stockpiling of soil materials is approved by the commission in lieu of immediate redistribution, the prime farmland topsoil and subsoil must be stockpiled separately from each other. Stockpiles must be protected in accordance with the requirements of according to section 69-05.2-15-03.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-26-04. Performance standards - Prime farmland - Soil replacement. In addition to meeting the applicable requirements of section 69-05.2-15-04, the operator shall replace soil materials on areas to be reconstructed as prime farmland according to the following:

1. The suitable plant growth materials ~~shall~~ must be respread over areas that have a landscape configuration similar to that which existed in the prime farmland areas prior to mining.
2. The minimum thickness of suitable plant growth material to be reconstructed for prime farmland ~~shall~~ must be forty-eight inches [1.22 meters], or a thickness which is equal to the depth of the original soil profile up to a subsurface horizon which inhibits root penetration, whichever is shallower. The commission ~~shall~~ will specify a thickness greater than forty-eight inches [1.22 meters] wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths. Soil horizons ~~shall be~~ are considered as inhibiting root penetration if their densities, chemical properties, or water supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity.
3. Replace the suitable plant growth materials in a manner that avoids excessive compaction.
4. Replace the subsoil materials specified in section 69-05.2-26-02 to the thickness needed to meet the requirements of subsection 2.
5. Replace the topsoil materials specified in section 69-05.2-26-02 as the final surface soil layer. The thickness of the topsoil layer ~~shall~~ must be the approximate average of the materials saved.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-26-05. Performance standards - Prime farmland - Revegetation. The following revegetation requirements ~~shall~~ must be met for areas being returned to prime farmland after mining:

1. Following soil replacement, the operator shall establish a vegetative cover capable of stabilizing the soil surface ~~with respect to erosion~~. All ~~vegetation shall be in compliance~~ revegetation must comply with the plan approved by the commission and be carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity. The timing and mulching provisions of sections 69-05.2-22-04 and 69-05.2-22-05 ~~shall~~ must be met.
2. Measurement of success in prime farmland revegetation will be determined in accordance with section 69-05.2-22-07.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-26-06. Performance standards - Prime farmland - Exemptions. ~~The provisions of this~~ This chapter ~~do~~ does not apply to:

1. Lands on which surface coal mining and reclamation operations are conducted ~~pursuant to~~ under any permit issued ~~prior to~~ before July 1, 1979.
2. Lands on which surface coal mining and reclamation operations are conducted ~~pursuant to~~ under any renewal or revision of a permit issued ~~prior to~~ before July 1, 1979.
3. Lands included in any existing surface coal mining operations for which a permit was issued for all or any part ~~thereof~~ prior to before July 1, 1979; provided, that:
 - a. ~~Such~~ The lands are part of a single continuous ~~surface coal~~ mining operation ~~began~~ begun under a permit issued before July 1, 1979.
 - b. The permittee had a legal right to mine the lands ~~prior to~~ before July 1, 1979, through ownership, contract, or lease but not including an option to buy, lease, or contract.
 - c. The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining operation ~~began~~ begun under a permit issued prior to July 1, 1979.
4. For the purposes of this section, a surface coal mining operation is presumed to consist only of a single continuous mining pit under permit ~~prior to~~ before July 1, 1979, but may include noncontiguous parcels if the operator can prove by

clear and convincing evidence that, ~~prior to~~ before July 1, 1979, the ~~noncontiguous~~ parcels were part of a single permitted operation. Clear and convincing evidence includes, ~~but is not limited to,~~ contracts, leases, deeds, or other legal documents, excluding options, that specifically treat physically separate parcels as one surface coal mining operation.

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

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-27-01. Research plots. Any agency or authorized organization wishing to establish experimental or evaluation plots of any kind on mined land prior to the release of bond ~~must~~ shall obtain the written approval of the commission and the operator. Landowner approval need be obtained only if the anticipated life of the plot will extend beyond the time at which bond release for the permit area is sought. Applicants shall state the objectives sought, the methods proposed to be used, the amount of land required, and duration of the proposed research. The applicant ~~must~~ shall also agree to submit a yearly progress report and a final report to both the commission and the operator. Once the experimental work has ended, the acreage must be returned to acceptable state reclamation requirements. The operator is to assume the costs of bringing the land used for experimental plots to a condition that will meet the reclamation requirements, unless the operator obtains written assurance from the agency or organization of that ~~agency's or organization's~~ entity's intent and ability to reclaim.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-24

69-05.2-27-02. Variances for experimental surface coal mining and reclamation practices.

1. In order to encourage advances in surface mining and reclamation practices, or to allow postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis where the postmining land use proposed requires an experimental practice to demonstrate feasibility, the commission may, with the approval of the director of the office of surface mining reclamation and enforcement, ~~United States department of the interior,~~ authorize variances in individual cases ~~on an experimental basis~~ from the ~~environmental protection performance~~ standards of North Dakota Century Code section 38-14.1-24.
2. Variances ~~shall will~~ not be authorized for other than experimental practices. For the purpose of this section,

"experimental practice" means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes.

3. No person shall engage in or maintain any experimental practice, unless that practice has first been approved in a permit.
4. Each person who desires to conduct an experimental practice shall submit a permit or revision application to the commission and to the director of the office of surface mining reclamation and enforcement for approval. The ~~permit~~ application ~~shall~~ must contain appropriate descriptions, maps, ~~and~~ plans, and data which show:
 - a. The nature of the experimental practice, including a description of the performance standards for which the variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted.
 - b. How use of the experimental practice:
 - (1) Encourages advances in mining and reclamation technology; or
 - (2) Allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under the ~~environmental protection performance~~ standards.
 - c. That the ~~surface mining and reclamation~~ operations proposed for using an experimental practice are not larger nor more numerous than necessary to determine the effectiveness and economic feasibility of the ~~experimental~~ practice.
 - d. That the experimental practice:
 - (1) Is potentially more or at least as environmentally protective, during and after the proposed ~~surface mining and reclamation~~ operations, as those would be required under the ~~environmental protection performance~~ standards.
 - (2) Will not reduce the protection afforded public health and safety below that provided by the ~~environmental protection performance~~ standards.
 - e. That the ~~permit~~ applicant will conduct special monitoring with respect to the experimental practice during and after

~~the~~ operations ~~involved~~. The monitoring program ~~shall~~ must:

- (1) Ensure the collection ~~and~~, analysis, and reporting of sufficient and reliable data to enable the commission and the director of the office of surface mining reclamation and enforcement to make adequate comparisons with other ~~surface coal mining and reclamation~~ operations employing similar ~~experimental~~ practices.
 - (2) Include requirements designed to identify, as soon as possible, potential risks to the environment and public health and safety from the use of the ~~experimental~~ practice.
5. Each application ~~shall set forth~~ must specify the environmental protection performance standards which will be implemented in the event the objective of the experimental practice is a failure.
 6. All experimental practices for which variances are sought ~~shall~~ must be specifically identified through newspaper advertisements by the ~~permit~~ applicant and the written notifications by the commission required by North Dakota Century Code section 38-14.1-18.
 7. No permit authorizing an experimental practice ~~shall~~ will be issued unless the commission first finds, in writing, upon the basis of both a complete application filed in accordance with the requirements of this section and the comments of the director of the office of surface mining reclamation and enforcement that:
 - a. The ~~experimental~~ practice meets ~~all of~~ the requirements of subdivisions b through e of subsection 4.
 - b. The ~~experimental~~ practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved.
 - c. The ~~experimental~~ practice has been specifically approved, in writing, by the director of the office of surface mining reclamation and enforcement, based on the director's findings that all of the requirements of subdivisions a through e of subsection 4 will be met.
 - d. The permit contains conditions which specifically:
 - (1) Limit the ~~experimental~~ practice authorized to that granted by the commission and the director of the office of surface mining reclamation and enforcement.

- (2) Impose enforceable alternative environmental protection requirements.
 - (3) Require the person to ~~conduct~~ conducting the periodic monitoring, recording, and reporting program ~~set forth in the application, with such~~ to include additional requirements as the commission or the director of the office of surface mining reclamation and enforcement may require.
8. Each permit which authorizes the use of an experimental practice ~~shall~~ will be reviewed ~~in its entirety~~ at least every ~~three~~ two and one-half years by the commission, or at least once prior to the middle of the permit term. After review, the commission ~~shall~~ will, with the consent of the director of the office of surface mining reclamation and enforcement, require by order, supported by written findings, any reasonable revision or modification of the permit provisions ~~necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety.~~ Copies of commission written findings will be sent to the permittee. Any person who is or may be adversely affected by the order ~~shall have~~ has the opportunity for ~~a hearing as provided for in review under North Dakota Century Code section sections 38-14.1-30 and 38-14.1-35.~~
9. Experimental practices granting variances from the special environmental standards of chapter 69-05.2-26, applicable to prime farmlands, will be approved only after consultation with the United States soil conservation service.
10. Revisions or modifications to an experimental practice will be processed in accordance with section 69-05.2-11-02. Any revisions which propose significant alterations to the experimental practice are subject to the notice, hearing, and procedural requirements contained in subdivision a of subsection 5 of section 69-05.2-11-02 and concurrence by the director of the office of surface mining reclamation and enforcement.

History: Effective August 1, 1980; amended effective May 1, 1990.
 General Authority: NDCC 38-14.1-03
 Law Implemented: NDCC 38-14.1-03

69-05.2-28-01. Inspection and enforcement - ~~Citizen requests~~
Requests for inspections.

- 1. A ~~citizen~~ person may request an inspection of a surface coal mining and reclamation operation by ~~furnishing to the commission~~ filing a signed, written statement, or making an oral report ~~followed by filing a signed, written statement,~~ giving which gives the commission reason to believe that any

requirement of North Dakota Century Code chapter 38-14.1, of this article, or any permit condition, has not been complied with, and ~~setting forth a~~ including the person's telephone number and address ~~where the citizen can be contacted.~~

2. The identity of any person supplying information to the commission relating to a possible violation or imminent danger or harm ~~shall~~ will remain confidential ~~with the commission,~~ if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required by a court of competent jurisdiction.
3. If an inspection is conducted as a result of information provided to the commission by a citizen, the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the inspector during the inspection.
 - a. ~~Such person~~ The commission will notify the person of when the inspection is to occur as far in advance of the inspection as possible. The person may accompany the inspector on the inspection. The person has a right of entry to, upon, and through the surface coal mining and reclamation operation about which that person supplied information, but only if that person is in the presence of and is under the control, direction, and supervision of the inspector while on the mine property.
4. Within ten days of the inspection, or, if there is no inspection, within fifteen days of receipt of the ~~citizen's~~ person's written statement, the commission ~~shall~~ will send the ~~citizen~~ person the following by certified mail:
 - a. If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection, or, an explanation of why no enforcement action was taken.
 - b. If no inspection was conducted, an explanation of the reason.
 - c. An explanation of the ~~citizen's~~ person's right, if any, to informal review of the action or inaction of the commission.
5. The commission ~~shall~~ will give copies of all materials in subsection 4 within the time limits specified in that subsection to the permittee or operator alleged to be in violation, except that the name of the citizen ~~shall~~ will be removed unless disclosure ~~of the citizen's identity~~ is permitted under subsection 2.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-27, 38-14.1-28

69-05.2-28-02. Inspection and enforcement - Review of decision not to inspect or enforce - Review of adequacy and completeness of inspections.

1. Any person who is or may be adversely affected by a surface coal mining and reclamation operation may ask the commission to ~~review~~ informally review a decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a ~~request for inspection filing~~ under section 69-05.2-28-01.
 - a. The ~~request for review shall~~ must be in writing and ~~shall~~ include a statement of how the person is or may be adversely affected and why the decision merits review.
 - b. The ~~request for review~~ must be made within thirty days of the date the person received the materials required by subsection 4 of section 69-05.2-28-01 ~~were received by the citizen.~~
2. The commission ~~shall will~~ will conduct the review and ~~shall~~ inform the ~~citizen~~ person, in writing, of the results ~~of the review from the citizen.~~ The permittee or operator alleged to be in violation ~~shall will~~ will also be given a copy of the results ~~of the review,~~ except that the name of the ~~citizen shall~~ person will not be disclosed unless confidentiality has been waived.
3. Informal review under this section ~~shall~~ does not affect any right to formal review under North Dakota Century Code section 38-14.1-30, or to a citizen's suit under North Dakota Century Code section 38-14.1-40.
4. Any person who is or may be adversely affected by a surface coal mining and reclamation operation may notify the commission in writing of any alleged failure on the part of the commission to make adequate and complete or periodic inspections.
 - a. The notification ~~shall~~ must include sufficient information to create a reasonable belief that the requirements ~~for inspections~~ are not being complied with and to demonstrate that the person is or may be adversely affected.
 - b. The commission ~~shall will,~~ will, within fifteen days of receipt of the notification, determine whether the requirements ~~for inspections~~ are being complied with, and if not, ~~shall~~

will immediately order an inspection to remedy the noncompliance.

- c. The commission ~~shall also~~ will furnish the complainant with a written statement of the reasons for ~~such the~~ determination and ~~the any~~ actions, ~~if any,~~ taken to remedy the noncompliance.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03

69-05.2-28-03. Inspection and enforcement - Cessation order - Affirmative relief - Modification - Vacation - Termination.

1. If a cessation ordered under subdivision a of subsection 1 of North Dakota Century Code section 38-14.1-28 will not completely abate the imminent danger or harm ~~in the most expeditious manner physically~~ as quickly as possible, the commission or its authorized representative ~~shall will~~ impose affirmative obligations on the operator or permittee ~~to whom it is issued~~ to abate the condition, practice, or violation. The cessation order ~~shall will~~ specify the time by which timetable for abatement shall be accomplished, including interim steps, if appropriate, and including the time for accomplishment of any interim steps. The cessation order may also require, ~~among other things,~~ the use of existing or additional personnel and equipment.
2. Reclamation operations and ~~other related~~ activities intended to protect public health and safety and the environment shall must continue during the period of any while a cessation order issued by the commission or its authorized representative pursuant to North Dakota Century Code section 38-14.1-28, is in force unless otherwise provided in the order.
3. The commission or its authorized representative may modify, terminate, or vacate a cessation order for good cause, and may extend the time for abatement if ~~the~~ failure to abate ~~within the time previously set~~ was not caused by lack of diligence ~~on the part of by~~ the permittee or operator ~~to whom it was issued.~~
4. The commission or its authorized representative ~~shall will~~ terminate a cessation order, by written notice ~~to the permittee or operator to whom the order was issued,~~ when it has been determined that all conditions, practices, or violations listed in the order have been are abated.
5. Termination of a cessation order ~~shall does~~ not affect the commission's right of the commission to assess civil penalties

for the violation, condition, or practice for which the ~~cessation~~ order was issued.

6. Surface coal mining and reclamation operations conducted without a valid permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, unless the operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting them has filed a timely and complete permit application.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-28

69-05.2-28-04. Inspection and enforcement - Cessation order - Informal minesite hearing.

1. A notice of violation which requires cessation of mining either expressly or by necessary implication or any cessation order issued ~~pursuant to~~ under subsection 1 of North Dakota Century Code section 38-14.1-28 ~~shall~~ will expire within thirty days of actual notice to the operator or permittee unless an informal public minesite hearing is held within that time. An informal public minesite hearing will be automatically scheduled by the commission and ~~will be~~ held within thirty days of the issuance of the cessation order unless the hearing is waived, in writing, by the operator or permittee.
2. The informal public minesite hearing ~~shall~~ will be held at or reasonably close to the minesite in order to allow viewings of the site during the ~~course of the~~ hearing, or at any other location acceptable to the commission and the operator or permittee ~~to whom the notice of violation or cessation order was issued.~~
3. A notice of violation or cessation order ~~shall~~ will not expire as provided in subsection 1, if the condition, practice, or violation in question has been abated or if the informal public minesite hearing has been waived.
4. The commission ~~shall~~ will give as much advance notice as is practicable of the time, place, and subject ~~matter~~ of the informal public minesite hearing to:
 - a. The operator or permittee ~~to whom the notice of violation or cessation order was issued;~~ and
 - b. Any person who filed a report which led to the issuance of that notice of violation or cessation order.

5. The commission ~~shall~~ will post notice of the hearing in ~~the commission~~ its offices and ~~shall~~ publish notice, where practicable, in the official county newspaper of each county ~~wherein~~ where the ~~surface coal mining~~ operation is located and in other daily newspapers of general circulation in the area of the mine.
6. ~~The requirements of An informal public minesite hearing is not a formal hearing under North Dakota Century Code section 38-14.1-30, relating to formal hearings, shall not govern informal public minesite hearings. An informal public minesite. The hearing shall will be conducted by a representative of the commission other than the person who initiated the notice of violation or cessation order, who may accept oral or written arguments and any other relevant information from any person attending.~~
7. Within five days after the close of the informal public minesite hearing, the commission or its authorized representative ~~shall~~ will affirm, modify, or vacate the notice of violation or cessation order in writing. The decision ~~shall~~ will be sent to:
 - a. ~~The operator or permittee to whom the notice of violation or cessation order was issued; and~~
 - b. ~~Any person who filed a report which led to the issuance of the notice of violation or cessation order. the persons identified in subsection 4.~~
8. Procedures of this section ~~regarding informal public minesite hearings shall~~ do not affect the right of any operator or permittee to a formal hearing under North Dakota Century Code section 38-14.1-30. A request for a formal hearing ~~pursuant to North Dakota Century Code section 38-14.1-30~~ must be made within the time prescribed in that section ~~in order~~ to preserve the right to formal administrative review of the ~~notice of violation or cessation order~~. However, there ~~shall be~~ is no right to request review of ~~a decision of the commission~~ commission's decision on an informal public minesite hearing.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-28

69-05.2-28-05. Inspection and enforcement - Notice of violation - Remedial measures - Modification - Vacation - Termination.

1. A notice of violation issued ~~pursuant to~~ under subdivision b of subsection 1 of North Dakota Century Code section 38-14.1-28 may include any remedial action required, ~~including~~

interim steps, if appropriate, and ~~including~~ the time for accomplishment of any interim steps.

2. The commission or its authorized representative may modify, vacate, or terminate a notice of violation for good cause.
3. The commission or its authorized representative ~~shall will~~ terminate a notice of violation by written notice ~~to the permittee or operator to whom it was issued~~, when it has been ~~determined that all violations listed in the notice of violation have been~~ are abated.
4. Termination of a notice of violation ~~shall does~~ not affect the ~~commission's~~ right ~~of the commission~~ to assess civil penalties for the violation for which the notice ~~of violation~~ was issued.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-28

69-05.2-28-06. Inspection and enforcement - Notice of violation - Extension of abatement period. The commission or its authorized representative may extend the time ~~set~~ for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee or operator ~~to whom it was issued~~. The total time for abatement ~~under a notice of violation, including all extensions, shall~~ may not exceed ninety days from the date of issuance.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-28

69-05.2-28-07. Inspection and enforcement - Cessation order or notice of violation - Inability to comply.

1. ~~No~~ Inability to comply will not be considered grounds for vacating a cessation order or notice of violation issued by the commission or its authorized representative may be vacated because of inability to comply by the operator or permittee to whom the order or notice was issued.
2. Inability to comply may not be considered in determining whether a pattern of violations exists.
3. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty and of the duration of ~~the suspension of a permit~~ suspension.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-28, 38-14.1-30, 38-14.1-32

69-05.2-28-08. Inspection and enforcement - Suspension or revocation of permits - Pattern of violations.

1. The commission may determine that a pattern of violations exists or has existed, based on two or more inspections ~~by the commission of the permit area~~ within any twelve-month period, after considering the circumstances, including:
 - a. The number of violations, cited on more than one occasion, of the same or related requirements of North Dakota Century Code chapter 38-14.1, this article, or the conditions of the permit;
 - b. The number of violations, cited on more than one occasion, of different requirements of North Dakota Century Code chapter 38-14.1, this article, or the conditions of the permit; or
 - c. The extent to which the violations were isolated departures from lawful conduct.
2. The commission ~~shall~~ will determine that a pattern of violations exists, if ~~the commission~~ it finds that there were violations of the same or related requirements of North Dakota Century Code chapter 38-14.1, this article, or the permit conditions of the permit during three or more inspections ~~by the commission of the permit area~~ within any twelve-month period.
3. Violations by any person or operator conducting surface coal mining operations on behalf of the permittee ~~shall~~ will be attributed to the permittee, unless the permittee establishes ~~to the satisfaction of the commission~~ that the violations were acts of deliberate sabotage.
4. Whenever a permittee fails to abate a violation within the abatement period set or subsequently extended, the commission will review the permittee's history of violations to determine if a pattern of violations exists under this section, and issue an order to show cause as appropriate under subdivision c of subsection 1 of North Dakota Century Code section 38-14.1-28.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-28

69-05.2-28-09. Inspection and enforcement - Suspension or revocation of permits - Orders to show cause.

1. The commission may decline to issue an order to show cause, or may vacate an outstanding order to show cause, if the commission finds that, taking into account exceptional factors present in the particular case, it would be demonstrably unjust to issue or to fail to vacate the order to show cause. The basis for this finding shall must be fully explained and documented in the records of the case.
2. Following the public hearing on an order to show cause provided for in subsection 2 of North Dakota Century Code section 38-14.1-30, the commission may issue an order suspending a permit.
 - a. The order for permit suspension may be for a fixed term or for an indefinite term and may include conditions for reinstatement of the permit.
 - b. A permit may be reinstated upon completion of a fixed term, provided the permittee demonstrates compliance with the any conditions for reinstatement that have been imposed. If the permittee has not complied with the conditions for reinstatement, the commission may extend the suspension for an additional fixed term, suspend the permit indefinitely, or institute proceedings for the revocation of the permit.
 - c. If a permit has been indefinitely suspended, the permittee may request reinstatement of the permit at any time. The commission may reinstate the permit, provided the permittee demonstrates compliance with the any conditions for reinstatement, if any.
 - d. The commission may, at any time and on its own motion, reinstate a permit that has been indefinitely suspended, or, institute proceedings for revocation of the permit.
 - e. The Permit suspension of a permit shall not result in forfeiture of the performance bond forfeiture unless the permit is subsequently revoked.
 - f. Reclamation operations, except as specified by the commission, shall must continue during the time of a permit suspension, however. However, all surface coal mining operations within the permit area shall must cease until the permit is reinstated.
3. If proceedings for permit revocation of the permit are instituted, the commission shall will issue an order to show cause why the permit should not be revoked in accordance with the provisions of under subdivision c of subsection 1 of North

Dakota Century Code section 38-14.1-28. An opportunity for a hearing on the order to show cause ~~shall~~ will be provided ~~pursuant to the provisions of~~ under subsection 2 of North Dakota Century Code section 38-14.1-30.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-28, 38-14.1-30

69-05.2-28-10. Inspection and enforcement - Minesite hearing on requests for temporary relief. A minesite hearing ~~shall~~ will be held on all requests for temporary relief filed ~~pursuant to~~ under subsection 4 of North Dakota Century Code section 38-14.1-30 before ~~such~~ relief may be granted ~~by the commission.~~ Temporary relief ~~shall~~ will not be granted ~~by the commission~~ if the provisions of subdivisions b and c of subsection 4 of North Dakota Century Code section 38-14.1-30 have not been met. If the commission and all parties agree, the hearing may be held at a location other than at the minesite.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-30

69-05.2-28-11. Inspection and enforcement - Inspections and monitoring - Filing requirements.

1. Copies of all records, reports, inspection materials, or information required by subsection 5 of North Dakota Century Code section 38-14.1-27 ~~that are prepared by the commission~~ ~~shall, operator, or permittee must be timely promptly~~ filed by the commission preparer in the office of the county auditor of the county in which auditor's office where the surface coal mining operations occur.
2. ~~Copies of all records, reports, inspection materials, or information required by North Dakota Century Code section 38-14.1-27 that are prepared by an operator or permittee shall be timely filed by the operator or permittee in the office of the county auditor of the county in which the surface coal mining operations occur.~~ Copies of all records, reports, inspection materials, or information obtained by the commission will be made immediately available to the public until at least five years after final bond release, except for information exempt from disclosure under subsection 3 of North Dakota Century Code section 38-14.1-13.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-27

Law Implemented: NDCC 38-14.1-27

69-05.2-28-12. Inspection and enforcement - Determination of amount of civil penalty - Factors. In determining the amount of any civil penalty assessed by the commission under the provisions of subsection 1 of North Dakota Century Code section 38-14.1-32, the commission ~~shall~~ will consider the following factors:

1. History of previous violations. The commission ~~shall~~ may assess a civil penalty of up to three thousand five hundred dollars per day based on the history of previous violations by the operator or permittee at the particular ~~surface coal~~ mining operation.
 - a. A violation ~~shall not be considered~~ if the notice of violation or cessation order is the subject of pending administrative or judicial review, or if the time to request such review or to appeal any administrative or judicial decision has not yet expired. If a violation is under review or if the time for review has not yet expired, the violation will not be considered.
 - b. No violation for which the notice of violation or cessation order has been vacated ~~shall be~~ is considered.
 - c. Each violation ~~shall be~~ is considered without regard to whether it led to a civil penalty.
2. Seriousness of the violation. The commission ~~shall~~ may assess a civil penalty of up to three thousand five hundred dollars per day based on the seriousness of the violation, including any irreparable harm to the environment and any hazard to ~~the public health or safety of the public.~~ In determining the amount of the civil penalty based on the seriousness of the violation, the ~~the~~ The commission ~~shall~~ will consider:
 - a. The probability of the occurrence of the event which a violated standard is designed to prevent.
 - b. The extent of the potential or actual damage, in terms of area and impact on the public or environment.
 - c. The extent to which enforcement is obstructed by the violation.
 - d. The actual or potential duration of the damage or the impact on the public or the environment.
3. Negligence. The commission ~~shall~~ may assess a civil penalty of up to three thousand dollars per day based on the degree of fault of the operator or permittee ~~to whom the notice of violation or cessation order was issued~~ in causing or failing to correct the violation, condition, or practice which led to the notice ~~of violation or cessation~~ order, either through act or omission.

- a. A violation which occurs through no negligence, or, an inadvertent violation that was unavoidable by the exercise of reasonable care, ~~shall is not be~~ considered.
 - b. A civil penalty of up to one thousand five hundred dollars per day may be assessed for a violation which is caused by negligence, or the failure of an operator or permittee to prevent the occurrence of any violation of his permit or any requirement of North Dakota Century Code chapter 38-14.1 or this article, due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate ~~any such the~~ violation due to indifference, lack of diligence, or ~~lack of reasonable care,~~ ~~shall be assessed a civil penalty of up to one thousand five hundred dollars per day,~~ depending on the degree of negligence.
 - c. A civil penalty of up to three thousand dollars per day may be assessed for a violation which occurs through a greater degree of fault than negligence, or through reckless, knowing, or intentional conduct, ~~shall be assessed a civil penalty of up to three thousand dollars per day depending on the degree of fault.~~
4. Good faith in attempting to achieve compliance. The commission may deduct up to one thousand dollars per day from the total civil penalty assessed based on the demonstrated good faith of the operator or permittee charged in attempting to achieve rapid compliance after notification of the violation.
- a. "Rapid compliance" means that the operator or permittee ~~to whom the notice of violation or cessation order was issued~~ took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.
 - b. No deduction ~~shall will~~ be made for normal compliance, which is abatement of the violation within the time set for abatement.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-32

69-05.2-28-13. Inspection and enforcement - Civil penalty - Assessment of separate violations for each day. Whenever a violation ~~contained in a notice of violation or cessation order~~ has not been abated within the ~~abatement~~ period set ~~in the notice or order,~~ a civil penalty of not less than seven hundred fifty dollars ~~shall will~~ be assessed for each day ~~during which such of the failure continues,~~ except that if the operator or permittee ~~to whom the notice or order was issued~~

initiates review proceedings with respect to the violation, the abatement period ~~shall~~ will be extended as follows:

1. If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under subsection 4 of North Dakota Century Code section 38-14.1-30, after a determination that the operator or permittee ~~to whom the notice or order was issued~~ will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement ~~shall~~ will not end until the date on which the commission issues a final order ~~with respect to the violation in question~~; and
2. If the operator or permittee ~~to whom the notice or order was issued~~ initiates review proceedings under North Dakota Century Code section 38-14.1-35 with respect to the violation, in which the obligations to abate are suspended by the court, the daily assessment of a penalty ~~shall~~ will not be made for any period before entry of a final order by the court.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-30, 38-14.1-32, 38-14.1-35

69-05.2-28-14. Inspection and enforcement - Civil penalty - Escrow account and bond procedure.

1. Upon receipt of a timely request for a formal hearing by an operator or permittee ~~pursuant to~~ under subsection 1 of North Dakota Century Code section 38-14.1-30, the commission ~~shall~~ will inform the operator or permittee, by certified mail, of the proposed amount of any civil penalty which may be assessed by the commission.
2. The operator or permittee shall then either pay the amount of the proposed penalty in full within thirty days and withdraw the ~~operator's or permittee's~~ request for a formal hearing, forward the amount of the proposed penalty to the commission within thirty days to be held in escrow pending a final commission decision on the violation and the amount of the penalty, or post a bond within thirty days with the commission payable to the state ~~of North Dakota~~ in the amount of the proposed penalty pending a final commission decision on the violation and the amount of the penalty.
3. If the operator or permittee requests ~~judicial~~ review of a final commission decision ~~of the commission pursuant to~~ under North Dakota Century Code section 38-14.1-35, the amount of the proposed penalty ~~shall~~ must continue to be held in escrow, or the bond ~~shall~~ must remain in full force and effect, until completion of ~~judicial~~ review.

4. Except as provided in subsection 5, if the operator or permittee does not request ~~judicial~~ review of a final ~~commission~~ decision of the ~~commission pursuant to~~ under North Dakota Century Code section 38-14.1-35, the following procedures ~~are applicable~~ apply:
 - a. If the amount of the proposed penalty had been forwarded to the commission to be held in escrow, the escrow ~~shall~~ must end and the escrowed funds ~~shall be~~ transferred to the commission in payment of the penalty; or
 - b. If a bond has been posted, the operator or permittee shall pay the amount of the penalty ~~in full~~ within thirty days after the assessment of the penalty by the commission is mailed or the bond shall be forfeited.
5. If the final ~~commission~~ decision of the ~~commission~~, or of the court on ~~judicial~~ review, results in a reduction or an elimination of the amount of the proposed penalty, the commission ~~shall will~~ either refund to the operator or permittee ~~assessed~~ all or part of the escrowed amount, with interest at the legal rate from the date of payment into escrow to the date of refund, or release all or part of the bond.
6. If the operator or permittee had previously forwarded the amount of the proposed penalty to the commission to be held in escrow and if the final decision of the commission results in an increase in the amount of the penalty, the operator or permittee shall pay the difference to the commission within thirty days after the assessment of the penalty by the commission is mailed, unless judicial review is requested.
7. If the operator or permittee has failed to file a timely request for a formal hearing ~~pursuant to~~ under subsection 1 of North Dakota Century Code section 38-14.1-30, the amount of the any civil penalty ~~assessed, if any, shall will~~ be incorporated in a final order of the commission as provided in subdivision b of subsection 1 of North Dakota Century Code section 38-14.1-29. The order ~~shall will~~ require the operator or permittee to pay the civil penalty ~~assessed~~ within thirty days after the order is mailed.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-29, 38-14.1-30

69-05.2-28-15. Inspection and enforcement - Surface owner interference. The surface owner is prohibited from interfering with reclamation procedures as long as ~~such~~ the procedures form a part of a commission-approved reclamation plan.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-03

69-05.2-29-01. Small operator assistance - Responsibilities of the commission. The commission ~~shall~~ will:

1. Review requests for assistance and determine qualified operators.
2. Develop and maintain a list of qualified laboratories pursuant to the requirements of as required by 30 CFR 795.17 795.10 and pay ~~laboratories~~ them for services rendered.
3. Conduct periodic onsite evaluations of ~~the small operator assistance~~ program activities with ~~the appropriate small operator~~ participating operators.
4. Participate in data coordination with the office of surface mining reclamation and enforcement, ~~United States department of the interior, in data coordination activities with the~~ United States geological survey, United States environmental protection agency, and other appropriate agencies or institutions.
5. Ensure that applicable equal opportunity in employment provisions are included ~~within any~~ in contract or other procurement documents.

History: Effective August 1, 1980; amended effective May 1, 1990.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-03, 38-14.1-37

69-05.2-29-02. Small operator assistance - Program services. To the extent possible with available funds, the commission ~~shall~~ will for qualified small operators who request assistance:

1. Select and pay a qualified laboratory to:
 - a. Determine ~~for the operator~~ the probable hydrologic consequences of the mining and reclamation operations both on and off the proposed permit area in accordance with according to section 69-05.2-29-06.
 - b. Prepare a statement of the results of test borings or core samplings in accordance with according to section 69-05.2-29-06.
2. Collect and provide general hydrologic information on the basin or subbasin areas within which the anticipated mining will occur. The information provided ~~shall~~ will be limited to

that required to relate the basin or subbasin hydrology to the hydrology of the proposed permit area.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-37

69-05.2-29-03. Small operator assistance - Eligibility for assistance. An applicant is eligible for assistance if the applicant:

1. Intends to apply for a permit ~~pursuant to~~ under North Dakota Century Code chapter 38-14.1.
2. Establishes that the probable total actual and attributed production ~~of the applicant~~ for each year of the permit will not exceed one hundred thousand tons [90718.47 metric tons]. Production from the following ~~operations shall~~ will be attributed to the permittee:
 - a. All coal produced by operations beneficially owned entirely by the applicant or controlled, by reason of ownership, direction of the management or in any other manner ~~whatsoever~~, by the applicant.
 - b. The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the applicant owns more than a five percent interest.
 - c. All coal produced by persons who own more than five percent of the applicant or who, directly or indirectly, control the applicant by reason of stock ownership, direction of the management, or in any other manner ~~whatsoever~~.
 - d. The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the applicant.
 - e. All coal produced by operations owned by members of the applicant's family or relatives unless it is established that there is no direct or indirect business relationship between or among them.
3. Is not restricted in any manner from receiving a permit.
4. Does not organize or reorganize the applicant's company solely for the purpose of obtaining assistance under the small operator assistance program.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-37

69-05.2-29-04. Small operator assistance - Filing for assistance. Each applicant for the small operator assistance program shall submit ~~the following information~~ to the commission:

1. A statement of intent to file a permit application.
2. The names and addresses of:
 - a. The potential ~~permit~~ applicant.
 - b. The potential operator if different from the applicant.
3. A schedule of the estimated total coal production ~~of coal~~ from the proposed permit area and all other locations from which production is attributed to the applicant under section 69-05.2-29-03. ~~The schedule shall include~~ Include for each location:
 - a. The name under which coal is or will be mined.
 - b. The permit number.
 - c. The actual coal production for the year preceding the application for assistance and that portion of the production attributed to the applicant.
 - d. The estimated coal production for each year of the proposed permit and that portion attributed to the applicant.
4. A description of:
 - a. The ~~method of~~ surface coal mining operation ~~proposed~~.
 - b. The anticipated starting and termination dates of mining operations.
 - c. The number of acres [hectares] of land to be affected by the proposed mining.
 - d. A general statement on the probable depth and thickness of the coal resource, including a determination of reserves in the permit area and how they were calculated.
5. A topographic map of 1:24,000 scale or larger ~~or other topographic map of equivalent detail~~ which clearly shows:
 - a. The area ~~of land~~ to be affected and the natural drainage above and below ~~the affected area~~ it.
 - b. The names of property owners within and adjacent to the area to be affected and of adjacent lands.

- c. The location of existing structures and developed water sources within and adjacent to the area to be affected ~~and of adjacent lands~~.
 - d. The location of existing and proposed test boring or core samplings.
 - e. The location and extent of known ~~working of any~~ abandoned underground mines.
6. Copies of documents which show that:
- a. The applicant has a legal right to enter and commence mining within the permit area.
 - b. A legal right of entry has been obtained for the commission and laboratory personnel to inspect the lands to be mined and adjacent lands which may be affected to collect environmental data or install necessary instruments.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-37

69-05.2-29-05. Small operator assistance - Application approval - Notice of denial.

- 1. If the commission finds the applicant eligible, and it does not have information readily available which would preclude issuance of a mining permit to the applicant for mining in the area proposed, it ~~shall~~ will:
 - a. Determine the minimum data requirements necessary to meet the provisions of section 69-05.2-29-06.
 - b. Select the services of one or more qualified laboratories to perform the required work. A copy of the contract or other appropriate work order and the final approved report ~~shall~~ will be provided to the applicant.
- 2. The commission ~~shall~~ will inform the applicant in writing if the application is denied and shall state the reasons for denial.
- 3. The granting of assistance under this part ~~shall~~ will not be a factor in commission decisions by the commission on a subsequent permit application.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-37

69-05.2-29-06. Small operator assistance - Data requirements.

1. The commission ~~shall~~ will determine the minimum data collection requirements for each applicant or group of applicants ~~to meet the minimum requirements for the collection of data~~. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans ~~by the operator~~. The data requirements will be based on:
 - a. The extent of currently available hydrologic and core analysis data for the applicable area provided by the commission.
 - b. The data collection and analysis guidelines developed and provided by the commission.
2. A determination of the probable hydrologic consequences of the mining and reclamation operations, both onsite and offsite, shall be made by a qualified laboratory. The data for this determination shall include the following ~~specific provisions~~:
 - a. The existing and projected surface and ground water seasonal flow regime, including water level and water table evaluations. The commission ~~shall~~ will specify duration and return frequencies to be used in the determination.
 - b. The existing and projected seasonal quality of the surface and ground water regime. This ~~shall~~ must include measurements and estimates of dissolved and suspended solids, pH, iron, manganese, surface and channel erosion, and other water quality parameters specified by the commission.
3. A statement of the result of test borings or core samplings from the proposed permit area ~~which shall include~~ including:
 - a. Logs from any drill holes including identification of each stratum and water level penetrated.
 - b. The coal seam thickness and its chemical analysis including sulfur content.
 - c. The chemical analysis of potentially toxic or toxic-forming sections of the overburden, and the chemical analysis of the stratum lying immediately underneath the coal to be mined.
4. The statement by a qualified laboratory under subsection 3 may be waived by the commission by a written determination that ~~such~~ the requirements are unnecessary with respect to the specific ~~permit~~ application.

5. Data collected under the small operator assistance program ~~shall~~ will be made available to all interested persons, except information related to the chemical and physical properties of coal. Information regarding the mineral or elemental content of the coal which is potentially toxic in the environment ~~shall~~ will be made available.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-37

69-05.2-29-07. Small operator assistance - Assistance funding.

1. Funds authorized for the small operator assistance program ~~shall~~ may not be used to cover state administrative costs or the costs of test boring or core sampling.
2. The commission ~~shall~~ will, to the extent practicable, establish a formula for allocating funds among eligible small operators if available funds are ~~less than those required to provide the services pursuant to this chapter~~ insufficient. This formula ~~shall~~ will include such factors as the applicant's:
 - a. Anticipated date of filing a permit application.
 - b. Anticipated date for commencing mining.
 - c. Performance history.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-37

69-05.2-29-08. Small operator assistance - Applicant liability.

1. The applicant shall reimburse the commission for the cost of the laboratory services ~~performed pursuant to this chapter~~ if the applicant:
 - a. Submits false information.
 - b. Fails to submit a permit application within one year ~~from the date of receipt of~~ after receiving the approved laboratory report.
 - c. Fails to mine after obtaining a permit.
 - d. ~~If the commission finds that the applicant's actual and attributed annual production of coal exceeds~~ Produces over one hundred thousand tons [90718.47 metric tons] during

any year of mining under the permit for which the assistance is provided.

e. Sells, transfers, or assigns the permit to another person and the transferee's total actual and attributed production exceeds the one hundred thousand-ton [90718.47 metric-ton] annual production limit during any consecutive twelve-month period of the remaining permit term. Under this subdivision, the applicant and successor are jointly and severally obligated to reimburse the commission.

2. The commission may waive the reimbursement obligation if it finds that the applicant at all times acted in good faith.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-37

69-05.2-30-01. Off-permit use of other minerals. Any operator or permittee proposing to remove and utilize any solid, noncoal natural resources from the permit area should submit a plan to the commission for approval, including at a minimum the following information. Solid, noncoal mineral resources found in the permit area may be used for nondetrimented purposes outside the permit area after obtaining commission approval. Each operator or permittee shall submit a plan and map showing:

1. Name and address of the applicant.
2. Identification of the other minerals to be removed and utilized in nondetrimental manner. Permit number.
3. A map showing the location of the other minerals to be removed and identification of the permit number.
4. The method to be used to remove and transport the other minerals. Mineral identification, estimated volume, location before and after removal, proposed use, and method of transport.
- 5- 4. Any impact the removal will have on the reclamation potential of the area.
- 6- 5. A description and the location of the proposed use of the other minerals and if Whether the use is temporary or permanent.
- 7- 6. Chemical and physical characteristics of the other minerals that the commission may require for material other than sand, gravel, and porcelanite.

- ~~7.~~ 7. The name and address of the owner or owners of record of the other minerals, as well as proof, consisting of certified copies of the relevant lease agreements, of the operator's legal right to remove ~~the other minerals~~ them.
- ~~8.~~ 8. A statement identifying all applicable statutory requirements and how the applicant plans to comply with ~~these requirements~~ them.
- ~~10.~~ 10. An estimate of the volume of other minerals proposed to be removed.

History: Effective August 1, 1980; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03

69-05.2-31-01. Training of blasters.

1. Persons seeking to become certified as blasters shall receive training including, ~~but not limited to,~~ the technical aspects of blasting operations and state and federal laws governing the storage, transportation, and use of explosives. Coursework must provide training in and discuss practical applications of:
 - a. Explosives, including:
 - (1) Selection of the type of explosives to be used.
 - (2) Determination of the properties of explosives which will produce desired results at an acceptable level of risk.
 - (3) Handling, transportation, and storage.
 - b. Blast designs, including:
 - (1) Geological and topographic considerations.
 - (2) Design of a blasthole, with critical dimensions.
 - (3) Pattern design, field layout, and timing of blastholes.
 - (4) Field applications.
 - c. Loading blastholes, including priming and boosting.
 - d. Initiation systems and blasting machines.
 - e. Blasting vibrations, airblast, and flyrock, including:

- (1) Monitoring techniques.
- (2) Methods to control adverse effects.
- f. Secondary blasting applications.
- g. Current state and federal laws and rules applicable to the use of explosives.
- h. Blast records.
- i. Schedules.
- j. Preblasting surveys, including:
 - (1) Availability.
 - (2) Coverage.
 - (3) Use of in-blast design.
- k. Blast-plan requirements.
- l. Certification and training.
- m. Signs, warning signals, and site control.
- n. Unpredictable hazards, including:
 - (1) Lightning.
 - (2) Stray currents.
 - (3) Radio waves.
 - (4) Misfires.
- 2. Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives shall receive direction and on-the-job training from a blaster.
- 3. Training courses must be given by competent, experienced persons at a frequency not to exceed one every three months. Courses developed and taught by coal mining industry personnel may be approved by the commission for ~~the~~ training of persons seeking to become certified blasters.

History: Effective April 1, 1985; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-31-02. Examination of blasters. The commission ~~shall~~ will ensure that candidates for blaster certification are examined by reviewing and verifying:

1. The competence of persons directly responsible for the use of explosives in surface coal mining operations through a written examination in technical aspects of blasting and state and federal laws and rules governing the storage, use, and transportation of explosives including, ~~at a minimum,~~ the topics set forth in subsection 1 of section 69-05.2-31-01; and
2. The practical field experience of the candidates as necessary to qualify a person to accept the responsibility for blasting operations in surface coal mining operations. Such experience must demonstrate that the candidate possesses practical knowledge of blasting techniques, understands the hazards involved in the use of explosives, and otherwise has exhibited a pattern of conduct consistent with the acceptance of responsibility for blasting operations.

History: Effective April 1, 1985; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-31-03. Certification of blasters.

1. Candidates for blaster certification examined and found satisfactory ~~must~~ will be certified for a period of three years.
2. Recertification is authorized following either reexamination or a demonstration of satisfactory participation in a blaster-related refresher course during the term of the certification, except that a candidate whose certificate has been suspended or revoked may only be recertified following reexamination.
3. No blaster may be recertified two consecutive times unless, upon the second application, the applicant successfully passes the examination required in section 69-05.2-31-02.
4. Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence must be reported immediately to the commission.
5. The conditions for maintaining certification include:
 - a. Presentation of the blaster's certificate to the commission or its authorized representative upon request.
 - b. Blaster's certificates may not be assigned or transferred.

- c. Blasters may not delegate their responsibility to any individual who is not a certified blaster.

History: Effective April 1, 1985; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-31-04. Training, examination, and certification of blasters - Enforcement.

1. The commission may, and upon a finding of willful misconduct, ~~shall~~ will suspend or revoke the certification of a blaster during the term of the certification or take any other necessary action for any of the following reasons:
 - a. Noncompliance with any order of the commission.
 - b. Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs.
 - c. Violation of any provision of the state or federal explosives laws or rules.
 - d. Providing false information or a misrepresentation to obtain certification.
2. Notice and opportunity for hearing must be given prior to the suspension or revocation unless it is not practicable, in which case notice and hearing must be provided as soon as practicable after the suspension, revocation, or other adverse action.
3. Upon notice of a revocation, the blaster shall immediately surrender the revoked certificate to the commission.

History: Effective April 1, 1985; amended effective May 1, 1990.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

TITLE 75

Department of Human Services

MAY 1990

STAFF COMMENT: Chapter 75-02-05.1 contains all new material but is not underscored so as to improve readability.

AGENCY SYNOPSIS: Chapter 75-02-05.1 was adopted by the Department of Human Services as an interim final rule effective October 1, 1989.

Federal law (42 U.S.C. § 1396r(h)) requires that each state establish certain specified remedies as part of the enforcement process associated with nursing facility surveys. Those remedies are required to be established by statute or regulation, and to be effective not later than October 1, 1989. Accordingly, the department made a finding that emergency rulemaking was necessary because a delay in rulemaking was likely to cause a loss of revenues appropriated to support a duty imposed by law upon the department.

The proposed rules are based on the requirements of 42 U.S.C. § 1396r(h) for the creation of an enforcement process to be applied upon a finding that a nursing facility no longer meets the requirements of 42 U.S.C. § 1396r(b) (requirements relating to provision of services), 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 rules, regulations, or policies adopted to implement those statutory requirements.

The proposed rules classify violations in terms of severity. The rules also classify violations in terms of the efforts made by the facility to ameliorate the deficiency or any adverse outcome to residents because of the deficiency. The department is obliged to impose incrementally more severe sanctions with respect to violations that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of the residents. The department is obliged to consider eight factors in determining the sanction to be imposed. Ten different sanctions are available, including four (the most severe) specifically required by federal law.

The Department of Health and Consolidated Laboratories, as the survey agency, undertakes the survey of the facility. If deficiencies are found, the survey agency determines if it will recommend the imposition of a sanction. That recommendation is conveyed to the Director of the Division of Medical Services of the Department of Human Services. If a violation is found that immediately jeopardizes the health or safety of one or more residents, the survey agency's recommendation must be transmitted to the director within two working days.

The director must issue a written order identifying violations and sanctions imposed. The facility may request reconsideration. If the facility is dissatisfied with the decision, on a timely request for reconsideration, it may appeal and secure an administrative hearing in review of the decision to impose a sanction. A final decision made by the department on such an appeal may be in turn appealed to the North Dakota District Court pursuant to the provisions of North Dakota Century Code chapter 28-32.

CHAPTER 75-02-05.1 NURSING HOME SANCTIONS

Section

75-02-05.1-01	Purpose
75-02-05.1-02	Authority and Objective
75-02-05.1-03	Definitions
75-02-05.1-04	Provision of Sanctions
75-02-05.1-05	Survey Agency Recommendations
75-02-05.1-06	Imposition of Sanctions
75-02-05.1-07	Scope of Sanctions
75-02-05.1-08	Determination of Amount of Civil Money Penalties
75-02-05.1-09	Prohibition on Submission of Claims Through Other Providers
75-02-05.1-10	Order and Notice of Order
75-02-05.1-11	Request for Reconsideration
75-02-05.1-12	Appeals
75-02-05.1-13	Application

75-02-05.1-01. 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(b) (requirements relating to provision of services), 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.

History: Effective October 1, 1989.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-02. Authority and objective. The department of human services is authorized by North Dakota Century Code section 50-24.1-04 to adopt such rules as are necessary to qualify for any federal funds available through the medical assistance program. The provision of an enforcement process to address deficiencies in nursing facilities is made a condition for approval of a state plan for medical assistance by 42 U.S.C. 1396r(h)(2)(B). No federal funds will be obtained pursuant to North Dakota Century Code chapter 50-24.1 in the event that the North Dakota state plan for medical assistance is not approved.

History: Effective October 1, 1989.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-03. Definitions.

1. "Class A violation" refers to a condition of participation (level A requirement) or, in the case of an intermediate care facility, a standard found out of compliance that immediately jeopardizes the health or safety of one or more residents.
2. "Class B violation" refers to a condition of participation (level A requirement) or, in the case of an intermediate care facility, a standard found out of compliance that has the potential for causing a direct and substantial threat to the health, safety, welfare, or rights of one or more residents, or unauthorized removal of a posted notice of sanction.
3. "Class C violation" refers to a standard or element (level B 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. "Director" means the director of the division of medical services of the department of human services, or the director's designee.
5. "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) Intermediate care facility nursing care and related services for residents who require medical or nursing care;

- (3) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or
 - (4) 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).
- 6. "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. Initial deficiencies may include violations that occurred at a time prior to the date of the survey or visit even if those violations no longer exist at the time of the survey or visit.
 - 7. "Repeat deficiency" means a violation which is substantially similar to a violation cited within the thirty-six preceding months.
 - 8. "Secretary" means the secretary of the United States department of health and human services.
 - 9. "Subsequent deficiency" means a new violation, related to a situation or problem which produced an initial deficiency, which causes that situation or problem to continue, and which is identified by a surveyor on a resurvey or revisit.
 - 10. "Survey agency" means the department of health and consolidated laboratories.

History: Effective October 1, 1989.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-04. Provision of sanctions. The department of human services may impose any sanction described in section 75-02-05.1-07 if it is found that a nursing facility no longer meets a requirement of 42 U.S.C. 1396r(b), (c), or (d), and it is further found that the facility's deficiencies:

- 1. Immediately jeopardize 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 9 of section 75-02-05.1-07, or terminate 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 75-02-05.1-07; or

2. Do not immediately jeopardize the health or safety of its residents, in which case the department may:
 - a. Terminate the facility's participation under the state plan;
 - b. Provide for one or more of the remedies described in section 75-02-05.1-07; or
 - c. Do both.

History: Effective October 1, 1989.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-05. Survey agency recommendations. The survey agency may recommend the imposition of 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, regulations, or policies adopted to implement those requirements. If the survey agency determines that the facility no longer meets those requirements, the survey agency may commence the procedure for imposition of sanctions.

1. If a class A violation is determined, within two working days of that determination, the survey agency shall prepare and transmit to the director a recommendation for the imposition of a sanction.
2. If a class B or class C violation is determined, within ten calendar days of that determination, the survey agency shall prepare and transmit to the director a recommendation for the imposition of a sanction.
3. The survey agency's recommendation may specify a sanction, the factors which support the imposition of that sanction, and the factors which would support the termination of that sanction. The survey agency may support the recommendation with information secured during a survey, or otherwise.
4. The director shall consider the recommendation of the survey agency in rendering a determination under section 75-02-05.1-06. If the director preliminarily determines to impose no sanction, or to impose a sanction different than that recommended by the survey agency, the director shall first so inform the survey agency. The survey agency may then

supplement the information furnished with its recommendation, and the director shall consider supplemental information furnished by the survey agency in rendering a determination under section 75-02-05.1-06.

5. If the facility asserts that the conditions or circumstances giving rise to the sanction have been corrected, the facility may declare its assertions in writing to the survey agency and to the director. The survey agency shall review the facility and shall promptly transmit to the director its recommendations concerning the termination of the sanction. If the survey agency recommends termination of the sanction, that recommendation must specify the date upon which the conditions or circumstances giving rise to the sanction appear to have been corrected.

History: Effective October 1, 1989.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-06. Imposition of sanctions.

1. The determination of appropriate sanctions must be at the discretion of the director, except that the appointment of a receiver must be as provided in North Dakota Century Code chapter 23-16.1. The director shall provide for the imposition of incrementally more severe sanctions for violations that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of the residents.
2. The following factors must be considered in determining the sanction 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 peer groups or licensing boards.

3. A sanction, once imposed, must continue until the facility has demonstrated that the conditions or circumstances giving rise to the sanction have been corrected.
4. When a facility has been subjected to a sanction imposed by the secretary, under authority of 42 U.S.C. 1396r(h)(3), (4), or (5), the provisions of 42 U.S.C. 1396r(h)(6) must govern the imposition of a sanction by the director.

History: Effective October 1, 1989.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-07. 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):

1. Preparation, by the facility, of a directed plan of correction which is subject to the approval of the director.
2. Transfer to a closed-end provider agreement not to exceed twelve months.
3. Mandatory attendance at provider information sessions.
4. One hundred percent review of the facility's claims prior to payment.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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 42 U.S.C. 1396r(b), (c), and (d).
10. In the case of an emergency, closure of the facility or transfer of facility residents to other facilities, or both.

History: Effective October 1, 1989.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-08. Determination of amount of civil money penalties. A facility which has been subjected to the imposition of a sanction under subsection 8 of section 75-02-05.1-07 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 director finds it to have been corrected. The amount of the civil money penalty must be determined as follows:

1. For each class A violation, not more than fifty dollars per licensed facility bed;
2. For each class B violation, not more than twenty-five dollars per licensed facility bed;
3. For each class C violation, not more than ten dollars per licensed facility bed;
4. For each subsequent finding of a violation, one and one-half times the penalty imposed for the initial violation; and
5. For each repeat violation, not more than three times the amount otherwise provided for under subsection 1, 2, or 3.

History: Effective October 1, 1989.

General Authority: NDCC 50-24.1-04

Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-09. Prohibition on submission of claims through other providers. No facility which is subject to a suspension or termination from participation or to any limitation or denial of payment shall submit claims for payment, either directly or through any clinic, group, corporation, or other association, to the division of medical services or any fiscal agent for 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 or chapter 75-02-05.

History: Effective October 1, 1989.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-10. Order and notice of order.

1. Upon a determination that the circumstances make the imposition of a sanction appropriate, the director 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, 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. A copy of the order must be furnished to the survey agency. The order may 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 director 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 director 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 6, 9, or 10 of section 75-02-05.1-07, 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 B 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 October 1, 1989.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-11. Request for reconsideration.

1. Within fifteen days after receipt of the order, the facility may request reconsideration by the director. Within fifteen days after receipt of a request for reconsideration, the director shall grant or deny the request for reconsideration and may suspend the imposition of any sanction except one imposed under subsection 9 or 10 of section 75-02-05.1-07, 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 director denies the request for reconsideration, the director 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 director determines to undertake reconsideration, the decision on reconsideration must be rendered within forty days after the issuance of the order. The notice of decision on reconsideration must advise the facility of the right of 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 available.

History: Effective October 1, 1989.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-12. Appeals.

1. A facility dissatisfied with a decision on a timely request for reconsideration, which conforms to the requirements of subsection 2 of section 75-02-05.1-11, may appeal. An appeal may be perfected by mailing or delivering the information, described in subdivisions a through d, to the appeals referee supervisor, department of human services, state capitol,

Bismarck, North Dakota, so that the mailed or delivered material arrives at the office of the appeals referee supervisor on or before 5:00 p.m. on the thirty-first day after the date of the determination of the director 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 director advising of the director'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. The appeal must be considered as provided for in chapter 75-01-03. The dispositive issue must be whether the violation occurred, not whether the violation has been corrected.

History: Effective October 1, 1989.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 42 USC 1396r(h)

75-02-05.1-13. Application. This chapter must be applied on or after October 1, 1989. 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 of human services 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 director 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, and for reimbursement to residents and patients for personal funds lost due to a cited violation.

History: Effective October 1, 1989.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 42 USC 1396r(h)

STAFF COMMENT: Article 75-06 contains all new material but is not underscored so as to improve readability.

ARTICLE 75-06

VOLUNTARY ADMISSION TO PUBLIC TREATMENT FACILITIES

Chapter	
75-06-01	Voluntary Admission to State Hospital
75-06-02	Voluntary Admission to Other Public Treatment Facilities

CHAPTER 75-06-01
VOLUNTARY ADMISSION TO STATE HOSPITAL

Section	
75-06-01-01	Definitions
75-06-01-02	Standards for Voluntary Admission
75-06-01-03	Where Application Made
75-06-01-04	Application Content
75-06-01-05	Application Procedures
75-06-01-06	Emergency
75-06-01-07	Nonemergency Walk-ins

75-06-01-01. Definitions. The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 25-03.1, except:

1. "Emergency services" means a service that is available at all times to handle crisis situations.
2. "Licensure standards" means the human service center licensure standards promulgated in article 75-05.
3. "Regional human service center" means a facility which was established in accordance with the provisions of North Dakota Century Code section 50-06-05.3.
4. "State hospital" means the state hospital at Jamestown, North Dakota.

History: Effective May 1, 1990.
General Authority: NDCC 25-02-03, 25-03.1-04
Law Implemented: NDCC 25-02-03, 25-03.1-04

75-06-01-02. Standards for voluntary admission. A request for voluntary admission to the state hospital must be made to a regional human service center and may be made by or on behalf of any person who is mentally ill, chemically dependent, or who exhibits demonstrable symptoms of mental illness or chemical dependency. A determination that inpatient care and treatment is necessary will be made primarily upon the basis of medical necessity. A judgment that admission to the state

hospital is medically necessary will be based upon the presence of symptoms of psychiatric illness and other factors which include, but are not limited to, the following:

1. Suicidal acts, gestures, or intent.
2. Homicidal intent or dangerousness to others.
3. Medical emergencies which would include postconvulsive confusional states, amnestic states, delirious episodes, and acute life-threatening drug toxicities, including alcohol intoxication.
4. Aggressive, irrational, out-of-control behavior.
5. Unmanageable psychotic, schizophrenic, toxic, or depressed states.
6. Organic brain syndromes regardless of etiology.
7. Self-destructive, compulsive behavior where outpatient treatment has failed and the patient is unable to function with less restrictive means of treatment.
8. Any other condition, symptom, or behavior related to mental illness or chemical dependency which, in the judgment of a physician or psychiatrist, necessitates inpatient treatment, because such condition, symptom, or behavior cannot be tolerated by the patient or the community.

History: Effective May 1, 1990.

General Authority: NDCC 25-02-03, 25-03.1-04

Law Implemented: NDCC 25-02-03, 25-03.1-04

75-06-01-03. Where application made. An application for voluntary admission to the state hospital must be made to the regional human service center in the region containing the county of residence of the applicant, or in any region in which the applicant is present.

History: Effective May 1, 1990.

General Authority: NDCC 25-02-03, 25-03.1-04

Law Implemented: NDCC 25-02-03, 25-03.1-04

75-06-01-04. Application content. An application for voluntary admission to the state hospital must be documented on forms provided by the department, and must elicit such information as the department deems necessary to determine the appropriateness of inpatient care and treatment.

History: Effective May 1, 1990.
General Authority: NDCC 25-02-03, 25-03.1-04
Law Implemented: NDCC 25-02-03, 25-03.1-04

75-06-01-05. Application procedures.

1. An application for voluntary admission to the state hospital must be processed in a reasonably prompt manner utilizing the intake, admission, and client referral procedures contained in chapter 75-05-04.
2. If an emergency exists threatening the life or health of an applicant or any other person, the emergency service procedures contained in chapter 75-05-03 must be utilized or a direct referral to the state hospital may be made.

History: Effective May 1, 1990.
General Authority: NDCC 25-02-03, 25-03.1-04
Law Implemented: NDCC 25-03.1-04

75-06-01-06. Emergency. If an emergency exists which threatens the life or health of the applicant or any other person, an application for voluntary admission may be made directly to the state hospital, which shall cause an immediate examination of the applicant and do one of the following:

1. Admit the applicant for inpatient care and treatment if the standards for voluntary admission contained in section 75-06-01-02 are met; or
2. Refer the applicant to a less restrictive treatment program or facility, if appropriate.

History: Effective May 1, 1990.
General Authority: NDCC 25-02-03, 25-03.1-04
Law Implemented: NDCC 25-03.1-04

75-06-01-07. Nonemergency walk-ins. If, in the judgment of a state hospital physician or psychiatrist, an application for admission by a walk-in applicant is not an emergency, the applicant must be referred to the appropriate human service center for intake.

History: Effective May 1, 1990.
General Authority: NDCC 25-02-03, 25-03.1-04
Law Implemented: NDCC 25-03.1-04

CHAPTER 75-06-02
VOLUNTARY ADMISSION TO OTHER PUBLIC TREATMENT FACILITIES

Section
75-06-02-01 Application Standards for Voluntary Admission
75-06-02-02 Application Procedures

75-06-02-01. Application standards for voluntary admission. An application for admission to a public treatment facility, other than the state hospital, may be made by or on behalf of any person who is mentally ill or chemically dependent or who has demonstrable symptoms of mental illness or chemical dependency.

History: Effective May 1, 1990.
General Authority: NDCC 25-03.1-04, 50-06-05.2
Law Implemented: NDCC 25-03.1-04, 50-06-05.2

75-06-02-02. Application procedures.

1. An application for voluntary admission to a public treatment facility, other than the state hospital, must be processed by the human service center utilizing the intake, admission, and client referral procedures contained in the human service center licensure standards, chapter 75-05-04.
2. If an emergency exists, threatening the life or health of the applicant or any other person, the emergency service procedures contained in chapter 75-05-03 must be utilized.

History: Effective May 1, 1990.
General Authority: NDCC 25-03.1-04, 50-06-05.2
Law Implemented: NDCC 25-03.1-04, 50-06-05.2

JUNE 1990

AGENCY SYNOPSIS: Federal law (42 U.S.C. Section 1396a(a)(13)(A)) requires, as a condition of approval of a state plan for Medical Assistance, that nursing home rates be set in a manner which the state finds, and makes assurances satisfactory to the Secretary of Health and Human Services, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards. North Dakota law (North Dakota Century Code section 50-24.4-02) grants ratesetting authority to the Department of Human Services, with respect to all residents of North Dakota nursing homes, which qualify as vendors of Medical Assistance. The North Dakota law was required to be implemented on January 1, 1990.

In order to comply with this requirement, the Department of Human Services commenced emergency rulemaking by adopting proposed amendments to North Dakota Administrative Code chapter 75-02-06, "Ratesetting for Nursing Home Care", as an interim final rule effective January 1, 1990.

The department made a finding that emergency rulemaking was necessary because a delay in rulemaking was likely to cause a loss of revenues appropriated to support a duty imposed by law upon the department.

The proposed amendments were based on the ratesetting requirements of 42 U.S.C. Section 1396a(a)(13)(A) and North Dakota Century Code section 50-24.4-02, in particular, and on North Dakota Century Code chapter 50-24.4, in general. The provisions of North Dakota Administrative Code chapter 75-02-06, without amendment, would have required the establishment of rates which would not have taken into consideration certain costs which are ordinarily incurred in the provision of services to private-pay residents. The regulations in existence prior to January 1, 1990, also provided certain limitations on the accumulation of capital by nursing facilities. The amendments allow the establishment of rates which are more consonant with a ratesetting

process applicable to all rate payers, and which consider all resident-generated revenues received by the nursing facility. The final rule adopted, after consideration of all written and oral submissions respecting the interim final rule, is substantially similar to the interim final rule.

The amendments recognize that North Dakota Century Code chapter 50-24.4 is a complex and detailed statute, which substantially limits the options and choices available to the department in establishing rates. The amendments could not merely repeat or paraphrase the text of the statute which is implemented and received the Attorney General's approval as to legality. Therefore, these rules must be read in conjunction with the provisions of North Dakota Century Code chapter 50-24.4 in order for a user to develop a complete understanding of ratesetting practice. For the convenience of users, the department has also developed and published a "Rate Setting Manual for Nursing Facilities", which combines the content of North Dakota Administrative Code chapter 75-02-06 and North Dakota Century Code chapter 50-24.4. This manual is intended to advise and guide the agency and the public concerning activities of the agency which are otherwise prescribed by rule or statute.

North Dakota Administrative Code chapter 75-02-06 contains 25 sections. They are:

Section 75-02-06-01 - Definitions: Defines 35 terms used in the chapter. Numerous definitions are deleted to avoid duplication of or conflict with 17 definitions found in North Dakota Century Code section 50-24.4-01.

Section 75-02-06-02 - Financial Reporting Requirements: Describes financial reports which the facility must submit for ratesetting purposes, and provides for an audit of those reports.

Section 75-02-06-02.1 - General Cost Principles: Sets forth four fundamental principles involved in establishing reasonable resident-related costs.

Section 75-02-06-02.2 - Direct Care Costs: Identifies and describes appropriate therapy and nursing costs for inclusion in the rate as direct care costs.

Section 75-02-06-02.3 - Other Direct Care Costs: Identifies five types of costs, related to direct care, for inclusion in the rate as other direct care costs.

Section 75-02-06-02.4 - Indirect Care Costs: Identifies seven types of indirect care costs for inclusion in the rate as indirect care costs.

Section 75-02-06-02.5 - Property Costs: Identifies property-related costs and other passthrough costs which may be included in the rate.

Section 75-02-06-02.6 - Cost Allocations: Requires direct costing of allowable costs whenever possible, and provides an allocation methodology for facilities which cannot direct cost.

Section 75-02-06-03 - Depreciation: Provides a method for allocating the capital costs of depreciable assets over the useful life of the assets. The resultant depreciation amounts are treated as costs in the fiscal periods to which they are allocated.

Section 75-02-06-04 - Interest Expense: Provides for the allowance of reasonable interest as a cost, and sets forth requirements relating to interest expense.

Section 75-02-06-04.1 - Funded Depreciation: Allows a facility to accumulate funds to replace depreciating assets.

Section 75-02-06-05 - Compensation: Limits compensation for top management personnel to an amount equal to the "highest market-driven compensation of an administrator employed by a freestanding facility".

Section 75-02-06-06 - Return on Investment: No amendment to this section was made.

Section 75-02-06-06.1 - Home Office Costs: Provides for the recognition of properly allocable costs of home offices of chain organizations.

Section 75-02-06-07 - Related Organization: Limits the allowable costs of services for facilities and supplies, furnished to a provider by a related organization, to the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market.

Section 75-02-06-08 - Rental Expense Paid to a Related Organization: With respect to facilities leased from a related organization, limits the allowable rental costs to allowable costs of ownership.

Section 75-02-06-09 - Taxes: Treats required taxes as an allowable cost, and requires the facility to take advantage of exemptions to taxes. Treats special assessments as capital investments.

Section 75-02-06-10 - Bad Debts: Allows the cost of bad debts, provided the facility makes a significant effort to collect bad debts and has an aggressive policy of avoiding bad debt expense.

Section 75-02-06-11 - Startup Costs: Allows startup costs, incurred prior to commencement of operations, as a part of the capital costs of a facility.

Section 75-02-06-12 - Offsets to Costs: Identifies items of income which must be subtracted from related costs before the cost is allowable.

Section 75-02-06-12.1 - Nonallowable Costs: Lists 29 costs which are properly not includable in establishing the rate for care.

Section 75-02-06-14 - Resident Days: Identifies those days of service for which the facility may charge a resident.

Section 75-02-06-16 - Rate Determinations: Describes the method by which rates are set, provides limitations on rates, describes adjustment factors and rate adjustments, provides for rate payments, describes a method for setting rates for partial years, and establishes a mechanism for one-time adjustments to rates when necessary to meet certification standards, for unforeseeable expenses, and for certain changes in historical operating costs.

Section 75-02-06-17 - Classifications: Requires resident classification reviews and describes the requirements for each classification.

Section 75-02-06-18 - Reviewer Criteria: Sets standards for the certification of nurses to do resident classification reviews.

These rules implement statutory requirements that rates be equalized for private-paying residents and residents whose care is paid for through the Medicaid program. They also implement statutory requirements that the facility be paid for services in an amount which relates directly to the care needs of the residents. This later requirement is usually referred to as "case-mix reimbursement".

75-02-06-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.
3. "Adjustment factors" means indices used to adjust reported costs for inflation or deflation based on forecasts for the rate year.
4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a resident being hospitalized.
5. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable.

4. "Charity allowances" means the reductions in charges made by the provider of services because of patient indigence.
6. "Chain organization" means a group of two or more health care facilities which are owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations which are engaged in other activities not directly related to health care.
7. "Community contribution" means contributions to civic organizations and sponsorship of community activities. It does not include donations to charities.
8. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.
- 5- 9. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.
- 6- "Cost finding" means the process of analyzing the data derived from the accounts ordinarily kept by the provider to ascertain costs of the various types of services rendered; it is the determination of these costs by the allocation of direct costs and proration of indirect costs.
- 7- "Courtesy allowance" means a reduction in charges in the form of allowances to physicians, clergy, and others for services received from the provider.
- 8- "Consumer price index (CPI)" means the economic indicator selected by the North Dakota office of management and budget as the basis for forecasting changes in costs within the state of North Dakota.
- 9- "Daily room rate" means, when applied to the charge to private pay patients, the rate which includes all items or services furnished as a part of the rate paid for medical assistance eligible patients, whether or not a particular item or service is regarded by a facility as special or ancillary.
10. "Cost report" means the department approved form for reporting costs, statistical data, and other relevant information of the facility.
11. "Department" means the department of human services.

- ~~11.~~ 12. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.
13. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an actual audit of the cost report.
14. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.
15. "Direct care costs" means the cost category for allowable nursing and therapy costs.
16. "Employment benefits" means fringe benefits and payroll taxes.
17. "Established rate" means the rate paid for services.
- ~~12.~~ 18. "Facility" means a skilled nursing or intermediate nursing care facility or a distinct part of a hospital providing skilled or intermediate nursing care not owned or administered by state government. It does not mean an intermediate care facility for the mentally retarded.
- ~~13.~~ 19. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.
- ~~14.~~ "Fringe benefits" means all nonsalary employee benefits, including, but not limited to, self-employment (FICA) taxes, unemployment insurance, workmen's compensation, pensions, bonuses, health and life insurance premiums, and accrued compensation for absences.
- ~~15.~~ "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
- ~~16.~~ "Historical cost" means those costs reported on the cost statement which were incurred and recorded in the facility's accounting records.
- ~~17.~~ "Interest" means the cost incurred with the use of borrowed funds.
- ~~18.~~ "Patient day" means, for cost determination purposes, all days for which the facility has received payment. Hospital days, therapeutic days, and reserved bed days must be included. The day of admission will be counted, but not the day of discharge. The day of death shall be counted.

- ~~19.~~ "Rate period" means an annual period beginning after the end of a report period and continuing until a subsequent rate period is begun after a subsequent report period.
20. "Freestanding facility" means a nursing facility which does not share basic services with a hospital-based provider.
21. "Highest market driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.
22. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
23. "In-house resident day" for nursing facilities means a day that a resident was actually residing in the facility and was not on therapeutic leave or in the hospital. "In-house resident day" for hospitals means an inpatient day.
24. "Limit rate" means the rate established as the maximum allowable rate for a cost category.
25. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.
26. "Medical assistance program" means the program which pays the cost of health care provided to eligible recipients pursuant to North Dakota Century Code chapter 50-24.1.
27. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.
28. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.
29. "Private room" means a room which is equipped for use by only one resident.
30. "Property costs" means the cost category for allowable real property costs and other costs which are passed through.
31. "Provider" means the organization or individual who has executed the provider agreement with the department.

- ~~20-~~ 32. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost conscious buyer pays for a given item or services.
- ~~21-~~ 33. "Related organization" means an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or facility provider.
- ~~22-~~ "Report period" means a period beginning on the first day of any month and ending on the last day of the twelfth subsequent month.
34. "Resident day" in a nursing facility means all days for which service is provided or for which payment is ordinarily sought, including hospital, leave, and hold days. The day of admission will be counted. The day of death will be counted, but not the day of discharge. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.
35. "Standardized resident day" means a resident day times the classification weight for the resident.

History: Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13); ~~42~~ CFR Part 447

75-02-06-02. Financial reporting requirements.

1. Records.

- a. The facility shall maintain on the premises the required census records and financial information which will be sufficient to provide for a proper audit or review. For any cost being claimed on the ~~annual~~ cost report, sufficient data must be available as of the audit date to fully support the report item. ~~The accounting system must be double entry.~~
- b. Where several facilities are associated with a group and their accounting and reports are centrally prepared, added information must be submitted, for those items known to be

lacking support at the reporting facility, with the annual cost report or must be provided to the local facility prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost. Home office cost reporting and cost allocation must be in conformance with HCFA-15 paragraphs 2150 and 2153.

- c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report form to the state agency, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. Each provider shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives of the secretary.

2. Accounting and reporting requirements.

- a. The accrual basis of accounting must be used for cost reporting purposes. A facility may maintain its accounting records on a cash basis during the year, but adjustments must be made to reflect proper accrual accounting procedures at year end and when subsequently reported in the annual cost statement. Generally accepted accounting principles will prevail unless alternative treatment is specified in this chapter provided in ratesetting procedures.
- b. To properly facilitate auditing, the accounting system should shall be maintained in such a manner that cost accounts will be grouped by cost center and be readily traceable to the cost report.
- c. The method for annual reporting of costs for reimbursement ratesetting purposes shall be prescribed by the department. A cost report, for the report year, satisfying all departmental reporting requirements must be filed with the management services division, provider audit unit, on forms prescribed by the department, on or before the last day of the third month following the end of the report period. The mailing of cost reports by registered mail, return receipt requested, will ensure documentation of the filing date. In the event a facility fails to file the required cost report on or before the due date, the medical services division shall, for the subsequent rate period, certify a rate equal to eighty percent of the rate established for services provided on the last day of the report period. Reinstatement of the rate shall occur upon the first of the month beginning after receipt of the required cost report, but is not

~~retroactive.~~ October first of each year. The report must include:

- (1) A complete statement of fees and charges for private-pay residents for the report year.
 - (2) A statement of ownership for the facility, including the name, address, and proportion of ownership of each owner.
 - (a) If a privately held or closely held corporation or partnership has an ownership interest in the facility, the facility shall report the name, address, and proportion of ownership of all owners of the corporation or partnership who have an ownership interest of five percent or more, except that any owner whose compensation or portion of compensation is claimed in the facility's cost report must be identified regardless of the proportion of ownership interest.
 - (b) If a publicly held corporation has an ownership interest of fifteen percent or more in the facility, the facility shall report the name, address, and proportion of ownership of all owners of the publicly held corporation who have an ownership interest of ten percent or more.
 - (3) Supplemental information reconciling the costs on the financial statements with costs on the cost report.
 - (4) A provider organization which operates more than one nursing facility may provide a consolidated audit report.
 - (5) Information requested by the department, pursuant to subdivision d of subsection 1 of North Dakota Century Code section 50-24.4-23, must be furnished by financial statements, together with supplemental information which reconciles costs on the financial statement with costs on the cost report.
 - (6) The audited report provided pursuant to subdivision a of subsection 1 of North Dakota Century Code section 50-24.4-23 must be for the facility's fiscal year.
- d. In the event a facility fails to file the required cost report on or before the due date, the medical services division may certify a rate equal to eighty percent of the established rate in effect for services provided after the due date. Reinstatement of the rate shall occur upon the

first of the month beginning after receipt of the required cost report, but is not retroactive.

- ~~d.~~ e. The facility shall make all adjustments, allocations, and projections necessary to arrive at allowable costs.
- ~~e.~~ f. Costs reported must include total costs and be adjusted to allowable costs. Adjustments required by the provider audit unit, to attain allowable cost, though not meeting the medicaid state agency or the state medicaid investigative group criteria of fraud or abuse on their initial identification, could, if repeated on future cost filings, be considered as possible fraud or abuse. The provider audit unit will forward all such items identified to the appropriate medicaid investigative group.
- ~~f.~~ Any facility required by medicare to submit a medicare cost report using the step-down method shall submit a copy of the medicare cost report with the annual cost report required by this section. If the medicare cost report covers a period other than the report period, the facility shall provide a statement of costs reported on a medicare cost report form prepared using costs for the report period.
- ~~g.~~ The facility shall submit a copy of the facilities' financial statement together with supplemental information which reconciles costs on the financial statement with costs on the cost report.

3. Auditing.

- ~~a.~~ Each facility shall provide the department with a copy of its annual financial statements as part of its annual cost report.
- ~~b.~~ The department will perform an audit of at least the latest available report year of each facility at least once every six years and retain all audit-related documents, including cost reports, working papers, and internal reports on rate calculations which are utilized and generated by audit staff in performance of audits and in establishing rates. Audits will meet generally accepted governmental audit standards.

- 4. ~~Penalties for fraud and incorrect filings.~~ Any person who has committed a crime, including, but not limited to, fraud, making a false statement, or misrepresentation of a material fact in an application for reimbursement, may, upon conviction, be fined or imprisoned in accordance with the provisions of 42 U.S.C. 1396h and North Dakota Century Code ~~title 12.~~ Claims on previously adjusted costs. If a facility claims, as allowable costs, costs which have been previously

adjusted, the department may determine that the report is a false report. Previously adjusted costs which are being appealed must be identified as unallowable costs. The provider may indicate that the costs are under appeal and not claimed under protest to protect a claim should the appeal be successful.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)+ ~~42 USC 1396h~~ 42 CFR Part ~~447~~, Subpart ~~6~~

75-02-06-02.1. General cost principles.

1. For ratesetting purposes, a cost must satisfy the following criteria:
 - a. The cost is ordinary, necessary, and related to resident care.
 - b. The cost is what a prudent and cost-conscious business person would pay for the specific good or service in the open market in an arm's-length transaction.
 - c. The cost is for goods or services actually provided in the facility.
2. The cost effects of transactions which circumvent this chapter are not allowable under the principle that the substance of the transaction prevails over form.
3. Costs that are incurred due to management inefficiency, unnecessary care, unnecessary facilities, agreements not to compete, or activities not commonly accepted in the nursing facility industry are not allowable.
4. Reasonable resident-related costs will be determined in accordance with the ratesetting procedures of this chapter, instructions issued by the department, and health care financing administration manual 15 (HCFA-15). If conflicts occur between this chapter, the ratesetting manual, or instructions issued by the department and HCFA-15, this chapter, the ratesetting manual, or instructions issued by the department will prevail.

History: Effective January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.2. Direct care costs. Direct care costs include only those costs identified in this section.

1. Therapies.

- a. Salary and employment benefits for speech, occupational, and physical therapists, or for personnel, who are not reported in subsection 2, performing therapy under the direction of a licensed therapist.
- b. The cost of noncapitalized therapy equipment or supplies used to directly provide therapy, not including office supplies.
- c. Training which is required to maintain licensure, certification, or professional standards, and the related travel costs.

2. Nursing.

- a. Salary and employment benefits for the director of nursing, nursing supervisors, in-service trainers for nursing staff, registered nurses, licensed practical nurses, quality assurance personnel, nurse aides, orderlies, and ward clerks.
- b. Routine nursing care supplies which are:
 - (1) Items that are furnished routinely and relatively uniformly to all residents; e.g., gowns, water pitchers, basins, bedpans, etc.
 - (2) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities; e.g., alcohol, applicators, cotton balls, incontinent supplies, bandaids, antacids, aspirins, nonlegend drugs ordinarily kept on hand, suppositories, tongue depressors, shampoo, deodorants, mouthwashes, kleenex, toothpaste, denture cleaner, etc.
 - (3) Items utilized by individual residents which are reusable, vary by the needs of an individual, and are expected to be available in the facility, e.g., ice bags, bedrails, canes, crutches, walkers, traction equipment, other durable medical equipment and wheelchairs, except for motorized, heavy-duty, specialized wheelchairs purchased at a cost in excess of one thousand dollars, and wheelchairs other than the type normally provided by the facility.
 - (4) Items which come within the definitions set forth in the personal needs guidelines of the guidelines for

routine drugs, supplies, and equipment for nursing facilities as issued by the medical services division.

c. Training which is required to maintain licensure, certification, or professional standards requirements, and the related travel costs.

d. Routine hair care, including grooming, shampooing, and cutting.

History: Effective January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.3. Other direct care costs. Other direct care costs include only those costs identified in this section.

1. The cost of consumable food products.

2. Dietary supplements, including supplements used for tube feedings such as elemental high nitrogen diet.

3. Laundry costs:

a. Salary and employment benefits for a director of laundry, laundry aides, seamstresses, and other people who gather, transport, sort, and clean linen and clothing.

b. The cost of laundry supplies such as detergents, softeners, and linens, but not including office supplies.

c. Contracted services for laundry.

4. Social service costs: Salary and employment benefits or consultant fees for social workers or social worker designees.

5. Activities costs:

a. Salary and employment benefits for an activities director and activities aides.

b. The cost of leisure and recreational activities and supplies including games, ceramics, pets, out-of-house activities, and noncapitalized exercise equipment, but not including office supplies.

History: Effective January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.4. Indirect care costs. Indirect care costs include all costs specifically identified in this section. Indirect care costs must be included in total, without direct or indirect allocation to other cost categories unless specifically provided for elsewhere.

1. Administration: Direct costs for administering the overall activities of the facility include, but are not limited to:
 - a. Salary and employment benefits for administrators, except that in a facility of sixty or fewer beds, part of an administrator's salary may be allocated to other cost categories provided adequate records identifying the hours and services provided are maintained by the facility.
 - b. Salary and employment benefits for assistant administrators, top management personnel, accounting personnel, clerical personnel, admitting personnel, data processing personnel, purchasing, receiving, and store personnel, medical director, security personnel, and of all personnel not designated in other cost categories.
 - c. Board of directors' fees and related travel expenses.
 - d. Security services.
 - e. Supplies except as specifically provided for in the direct care, other direct care, and other cost centers of the indirect care cost category.
 - f. Insurance, except insurance included as a fringe benefit.
 - g. Telephone and telegraph.
 - h. Postage and freight.
 - i. Membership dues and subscriptions.
 - j. Professional fees for services such as legal, accounting, and data processing.
 - k. Central or home office costs including property costs except as provided for in section 75-02-06-06.1.
 - l. Advertising and personnel recruitment costs.
 - m. Management consultants and fees.
 - n. Bad debts and collection fees as provided for in section 75-02-06-10.
 - o. Business meetings, conventions, association meetings, and seminars.

- p. Travel, except as necessary for training programs for personnel required to maintain licensure, certification, or professional standards requirements.
 - q. Training, except for training for personnel which is required to maintain licensure, certification, or professional standards requirements.
 - r. Business office functions.
 - s. Any costs which cannot be specifically classified to other cost categories.
2. Chaplain:
- a. Salary and employment benefits for all personnel assigned to meet the spiritual needs of the residents.
 - b. Supplies and other expenses related to meeting the spiritual needs of the residents.
3. Pharmacy: Compensation for pharmacy consultants.
4. Plant operations:
- a. Salary and employment benefits for a director of plant operations, engineers, carpenters, electricians, plumbers, caretakers, and all other personnel performing tasks related to maintenance or general plant.
 - b. The cost of heating and cooling, electricity, water, sewer and garbage, and cable television.
 - c. Repairs and maintenance contracts and purchased services.
 - d. Supplies necessary for repairs and maintenance of the facility, including hardware, building materials and tools, other maintenance-related supplies, and noncapitalized equipment not included elsewhere.
 - e. Motor vehicle operating expenses.
5. Housekeeping:
- a. Salary and employment benefits for a director of housekeeping, housekeepers, and other cleaning personnel.
 - b. Cost of cleaning supplies such as soaps, waxes, polishes, household paper products such as hand towels and toilet paper, and noncapitalized cleaning equipment.
 - c. Contracted services for housekeeping.

6. Dietary:

- a. Salary and employment benefits for a director of dietary, nutritionists, dieticians, cooks, and kitchen personnel involved in the preparation and delivery of food.
 - b. The cost of dietary supplies and utensils including dietary paper products, silverware, and noncapitalized kitchen and dining equipment.
7. Medical records: Salary and employment benefits for medical records' personnel performing maintenance.

History: Effective January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.5. Property costs. Property-related costs and other passthrough costs include only those costs identified in this section:

1. Depreciation.
2. Interest expense on capital and working capital debt.
3. Property taxes including special assessments as provided for in section 75-02-06-09.
4. Lease and rental costs.
5. Startup costs.
6. Reasonable legal expenses which are:
 - a. Incurred or as a result of a successful challenge to a decision by a governmental agency, made on or after January 1, 1990, regarding a rate year beginning on or after January 1, 1990;
 - b. Related to legal services furnished on or after January 1, 1990; and
 - c. In the case of a partially successful challenge, not in excess of an amount determined by developing a ratio of total amounts claimed successfully to total amounts claimed in the partially successful challenge and applying that ratio to the total legal expenses paid.

History: Effective January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.6. Cost allocations.

1. Direct costing of allowable costs will be used whenever possible. For facilities which cannot direct cost, the following allocation methods are to be used:

a. For nursing facilities that are combined with a hospital or have more than one license (including basic care), the following allocation methods must be used:

- (1) Nursing salaries which cannot be reported based on actual costs are to be allocated using time studies. Time studies must be conducted at least semiannually for a two-week period or quarterly for a one-week period. The time study must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibilities. Allocation percentages based on the time studies are to be used starting with the next pay period following completion of the time study or averaged for the report year. The methodology used by the facility may not be changed without approval by the department. If time studies are not completed, nursing salaries will be allocated based on revenues for resident services.
- (2) Salaries for a director of nursing or nursing supervisors which cannot be reported based on actual costs or time studies must be allocated based on nursing salaries or full-time equivalents (FTEs) of nursing staff.
- (3) Staff development or in-service trainer salaries must be allocated based on salaries.
- (4) Other nursing costs must be allocated based on resident days.
- (5) Therapy costs other than therapy salaries must be allocated based on the ratio of therapy salaries in the nursing facility to total therapy salaries.
- (6) Dietary and food costs must be allocated based on number of meals served or in-house resident days.
- (7) Laundry costs must be allocated on the basis of pounds of laundry.
- (8) Activity costs must be allocated based on in-house resident days.
- (9) Social service costs must be allocated based on resident days.

- (10) Housekeeping costs must be allocated based on usable square footage.
 - (11) Plant operation costs must be allocated based on usable square footage.
 - (12) Medical records costs must be allocated based on the number of admissions or discharges and deaths.
 - (13) Pharmacy costs must be allocated based on in-house resident days.
 - (14) Administration costs must be allocated on the basis of the percentage of total cost, excluding property, administration, and chaplain, in each facility.
 - (15) Property costs must be allocated first to a cost center based on square footage. The property costs allocated to a given cost center will then be allocated using the methodologies set forth in this section for that particular cost center.
 - (16) Chaplain costs must be allocated based on the percentage of total costs, excluding property, administration, and chaplain.
 - (17) Employment benefits must be allocated based on the ratio of salaries to total salaries.
- b. If any of the allocation methods in subdivision a cannot be used by a facility, a waiver request may be submitted to the medical services division. The request must include an adequate explanation as to why the referenced allocation method cannot be used by the facility. The facility must also provide a rationale for the proposed allocation method. Based on the information provided, the department will determine the allocation method that will be used to report costs.
 - c. Malpractice and professional liability insurance and therapy salaries must be direct costed.
2. For nursing facilities that cannot directly identify salaries and employment benefits to a cost category, the following cost allocation methods must be used:
 - a. Salaries must be allocated using time studies. Time studies must be conducted semiannually for a two-week period or quarterly for a one-week period. The time study must represent a typical period of time when employees are performing normal work activities in each of their assigned areas of responsibilities. Allocation percentages based on the time studies are to be used

starting with the next pay period following completion of time study or averaged for the reporting year. The methodology used by the facility may not be changed without approval by the department. If time studies are not completed, salaries and employment benefits will be allocated entirely to the indirect care costs, if any of the employee's job duties are included in this cost category. Otherwise, salaries and employment benefits will be other direct care costs.

b. Employment benefits must be allocated based on the ratio of salaries in the cost category to total salaries.

3. Nursing facilities which operate or are associated with nonresident-related activities, i.e., apartment complexes, shall allocate administration costs as follows:

a. If the costs of the nonresident-related activities exceed five percent of total nursing facility costs, exclusive of property, administration, and chaplain costs, administration costs must be allocated on the basis of the percentage of total cost, excluding property, administration, and chaplain.

b. If the costs of the nonresident-related activities are less than five percent of total nursing facility costs, exclusive of property, administration, and chaplain costs, administration costs must be allocated to each such activity based on the percent gross revenues for the activity is of total gross revenues; provided, however, that the allocation will not be based on a percentage exceeding two percent for each activity.

c. If the provider can document, to the satisfaction of the department, that none of the nursing facility resources or services are used in connection with the nonresident-related activities, no allocation need be made.

d. The provisions of this subsection do not apply to the activities of hospital and basic care facilities associated with a nursing facility.

History: Effective January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-03. Depreciation.

1. The Ratesetting principles of reimbursement for provider costs require that payment for services should include depreciation on all depreciable type assets that are used to provide

necessary services to medical assistance recipients. This includes assets that may have been fully (or partially) depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as an adjustment in a gain or loss on the cost report.

2. Depreciation methods.

a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, are unacceptable. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets shall be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared by the facility.

b. The useful life of a depreciable asset is determined in the light of the provider's experience and the general nature of the asset and other pertinent data. Providers shall project a useful life at least as long as the useful life guidelines published by the American hospital association. A longer useful life may be used. When the useful life selected differs significantly from that established by the guidelines, the deviation must be based on convincing reasons supported by adequate documentation. The depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used for purposes of reimbursement. A composite useful life may be used for a class or group of assets. The provider may choose to use a composite useful life of ten years for all equipment and four years for vehicles. With the exception of assets purchased prior to July 1, 1989, all assets must be depreciated using the same methodology.

3. Acquisitions.

a. If a depreciable asset or special assessment has, at the time of its acquisition, an estimated useful life of at least two years and a historical cost of at least one thousand dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset.

Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.

- b. All repair costs or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or one-half of the original estimated useful life, whichever is greater.
4. Proper records will provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable patient related resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.
 5. Basis for depreciation:
 - a. Depreciable costs may not exceed the lower of:
 - (1) Current reproduction costs less straight line depreciation over the life of the asset to the time of purchase;
 - (2) Fair market value at time of purchase;
 - (3) In the case of a trade-in, the sum of the book value of the trade-in plus the cash paid; or
 - (4) In the case of assets which have been previously owned by a hospital, or facility, and for which such hospital or facility has received payment, for services provided to recipients of benefits under title XVIII (Medicare) or XIX (Medicaid) of the Social Security Act, at a rate which reflects depreciation expense concerning those assets, the allowable acquisition cost of such assets to the first owner on or after July 18, 1984.
 - b. For purposes of this chapter, donated assets may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. The appraisal will be made by a recognized appraisal expert and will be accepted for depreciation purposes. The facility may elect to forego depreciation on donated assets thereby negating the need for a fair market value determination.

6. Purchase of a facility and its depreciable assets as an ongoing operation.

a. Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide. The cost basis of a facility and its depreciable assets acquired as an ongoing operation is limited to the lowest of the following:

- (1) Current reproduction cost of the assets, depreciated on a straight-line basis over its useful life to the time of the sale;
- (2) Price paid by the purchaser (actual cost);
- (3) Fair market value of the facility or asset at the time of the sale;
- (4) In a sale not bona fide, the seller's cost basis, less accumulated depreciation; or
- (5) With respect to sales made on or after July 18, 1984, the seller's cost basis less accumulated depreciation, plus recaptured depreciation.
- (6) In the case of assets which have been previously owned by a hospital, or facility, and for which such hospital or facility has received payment, for services provided to recipients of benefits under title XVIII (medicare) or XIX (medicaid) of the Social Security Act, at a rate which reflects depreciation expense concerning those assets, the allowable acquisition cost of such assets to the first owner on or after July 18, 1984.

b. The seller shall always use the sale price in computing the gain or loss on the disposition of assets.

c. Appraisal guidelines. To properly provide for costs or valuations of fixed assets, an appraisal will be required if the provider:

- (1) Has no historical cost records or has incomplete records of depreciable fixed assets; or
- (2) Prior to July 18, 1984, purchases a facility without designation of purchase price for the classification of assets acquired. Prior to having an appraisal made, the provider must inform the state that it

intends to have the appraisal made. At this time the provider shall also set forth the reasons for the appraisal and will make available to the department the agreement between the provider and the appraiser. The appraisal agreement should contain the appraisal date, the estimated date of completion, the scope of the appraisal, and the statement that the appraisal will conform to the current medicare regulation on principles of reimbursement for provider cost.

↔ (3) Limitation. With respect to purchases occurring before July 18, 1984, the department will recognize appraised value not to exceed cost basis for tax purposes. In all cases of major change, proper authority for expenditure shall be obtained.

7. For rate years beginning on or after January 1, 1990, the department will recognize for depreciation purposes the difference of the actual purchase price of building and equipment for nonrelated party purchases finalized before July 1, 1987, and the cost basis established at the time of purchase. The department will continue to use the useful life and the cost basis established at the time the purchases were made in determining the basis of depreciation for a facility purchased as an ongoing operation on or after July 1, 1987. No adjustments will be allowed for any depreciable costs that exceeded the basis in effect for rate periods prior to January 1, 1990.

~~6~~ 8. Recapture of depreciation.

a. At any time that the operators of a facility sell an asset, or otherwise remove that asset from service in or to the facility, any depreciation costs asserted after June 1, 1984, with respect to that asset, are subject to recapture to the extent that the sale or disposal price exceeds the undepreciated value. If the department determines that a sale or disposal was made to a related party, or if a facility terminates participation as a provider of services in the medicaid program, any depreciation costs asserted after June 1, 1984, with respect to that asset or facility, are subject to recapture to the extent that the fair market value of the asset or facility exceeds the depreciated value.

b. The seller and the purchaser may, by agreement, determine which shall pay the recaptured depreciation. If the parties to the sale do not inform the department of their agreement, the department will offset the amount of depreciation to be recaptured against any amounts owed, or to be owed, by the department to the seller and buyer. The department will first exercise the offset against the seller, and shall only exercise the offset against the

buyer to the extent that the seller has failed to repay the amount of the recaptured depreciation.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13); ~~42 CFR Part 447, Subpart E~~

75-02-06-04. Interest expense.

1. ~~General.~~

~~a.~~ To be allowable under the program, interest must be:

~~(1)~~ a. Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required;

~~(2)~~ b. Identifiable in the provider's accounting records;

~~(3)~~ c. Related to the reporting period in which the costs are incurred;

~~(4)~~ d. Necessary and proper for the operation, maintenance, or acquisition of the provider's facilities ~~as set forth in HCFA-15 paragraphs 202.2 and 202.3;~~

~~(5)~~ e. Unrelated to funds borrowed to purchase assets in excess of ~~cost or fair market value~~ the depreciable cost basis established at the time of purchase and recognized under the provisions of section 75-02-06-03; and

~~(6)~~ f. When representative of borrowing for the purpose of making capital expenditures for assets that were owned by any other hospital or facility on or after July 18, 1984, limited to that amount of interest cost which such hospital or facility may have reported, for medicaid ratesetting purposes, had the asset undergone neither refinancing nor a change of ownership.

~~b.~~ 2. In such cases where it was necessary to issue bonds for financing, any bond premium or discount shall be amortized over the life of the bond issue.

~~2.~~ 3. Interest paid by the provider to partners, stockholders, or related organizations of the provider is not allowable as a cost. Where the owner loans funds to a facility, the funds are considered capital, rather than borrowed funds.

~~3.~~ Interest on restricted gifts will be treated in a manner consistent with HCFA-15, Section 600.

4. If a facility incurs interest expense because of late payments by patients for resident services and charges the patients a service charge or interest for late payments, such income must be offset against interest expense. If no interest expense is incurred by the facility because of late payments by patients for resident services, interest charges paid by the patients must be offset against administrative expense.
5. Funded depreciation:
 - a. Funding of depreciation is the practice of setting aside cash or other liquid assets, in a fund separate from the general funds of the provider, to be used for replacement of the assets depreciated, or for other capital purposes. The deposits are, in effect, made from the cash generated by the noncash expense depreciation.
 - b. Deposits to the funded depreciation account are generally in an amount equal to the depreciation expense charged to costs each year. In order to qualify for all provisions of funded depreciation, the minimum deposits, exclusive of interest income to the account, must be fifty percent of the depreciation expensed that year. Deposits in excess of accumulated depreciation are allowable; however, the interest income generated by the "extra" deposits will be considered as a reduction of allowable interest expense. This provision is recommended as a means of conserving funds for the replacement of depreciable assets and purchase of capital assets. It is expected that the funds will be invested to earn revenues. The revenues generated by this investment will not be considered as a reduction of allowable interest expense if the earned interest or other income on the investment remains in the funded depreciation account.
 - c. Monthly or annual deposits representing depreciation must be in the funded depreciation account for six months or more to be considered as valid funding transactions. Deposits of less than six months are not eligible for the benefits of a funded depreciation account. However, if deposits invested before the six-month period remain in the account after the six-month period, the investment income for the entire period will not reduce the allowable interest expensed in that period. Total funded depreciation in excess of accumulated depreciation on patient-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
 - d. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets and for other capital expenditures are on a first-in, first-out basis. Withdrawals for general operating purposes or for

loans to the general fund are made on a last-in, first-out basis. Such loans must meet the "necessary and proper" requirements for need of the loan. Interest paid from the general fund to the funded depreciation account on the loan is an allowable cost, except as mentioned in subdivision c, where the deposit has not been in the fund for the six-month period; the interest paid on the loan is not an allowable cost. Loans made to the general fund may not be made for a period or term which is longer than three years. Documentation on prevailing interest rates at the time of the loan shall be maintained on file. The necessary and proper requirements set forth in HGFA-15 paragraphs 202.2 and 202.3 will apply to all loans made.

- e. The provider may use the funds in the funded depreciation account for purposes other than the improvement, replacement, or expansion of facilities or equipment related to patient care. However, allowable interest expenses for the period of withdrawal will be reduced to adjust for offsets not made in prior years for earnings applicable to such funds. For example, if the provider withdraws funds equal to two years' deposits, using the last-in, first-out method, any earnings applicable to these deposits during the two-year period are applied as a reduction of interest expense incurred during the period of withdrawal. When funded depreciation accounts are used for capital and noncapital purchases, the total interest income will be offset.
 - f. When money is borrowed to fund depreciation, interest paid by the provider on the money borrowed for this purpose is not an allowable cost.
 - g. Funded depreciation is to be used both for the replacement of existing assets and for expansion. These funds must be used for all capital outlays in excess of one thousand dollars except with regard to those assets purchased exclusively with donated funds, and cannot be restricted for a specific or future purpose. For example, restricting the account to funding depreciation for "building" would negate the intent of funding depreciation as defined by this section.
 - h. When capital purchases are made with borrowed funds rather than funds from the funded depreciation account, the entire interest income for funded depreciation will be offset up to the entire interest expense. Repayment of operating loans must be made within three years of the borrowing.
6. For the purposes of this section, "necessary" means that the interest is incurred on a loan made to satisfy a financial need of the facility and, for a purpose

reasonably related to resident care, and "proper" means that the interest is incurred at a rate not in excess of what a prudent borrower would be obliged to pay in an arm's-length transaction.

7. Interest must be paid to a lender that is not related to the borrower except for funds borrowed in accordance with section 75-02-06-04.1.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)+

~~42 CFR Part 447, Subpart 6~~

75-02-06-04.1. Funded depreciation.

1. Funding of depreciation is the practice of placing funds, including nonborrowed bond reserve and sinking funds, in a segregated account for the acquisition of depreciable assets used in rendering resident care or for other capital purposes related to resident care. Other capital purposes include capital debt liquidation, such as principal payments for bonds and mortgages.
2. All provisions of this subsection must be met in order to qualify as funding of depreciation. If the provisions are not met, income earned on investments will be offset to interest expense.
 - a. The action to fund depreciation must be approved by the appropriate managing body of the facility.
 - b. The fund or funds must be clearly designated in the facility's records as funded depreciation accounts.
 - c. The total market value of the funded depreciation fund, including loans made pursuant to subsection 5, must be available, unless contractually committed as provided in subsection 8 or 9, on an as-needed basis for the acquisition of the facility's depreciable assets used to render resident care, or for other capital purposes related to resident care. Loans made from funded depreciation must be available.
 - d. Income earned on investments in the fund must be deposited in and become part of the funded depreciation account.
 - e. Deposits to the funded depreciation account must remain for six months or more to be considered as funded depreciation. Deposits of less than six months are not eligible for the benefits of the funded depreciation

account. Investment income earned prior to elapse of the six-month period will not be offset unless the deposits are actually withdrawn.

- f. Funded depreciation may not be restricted for a specific or future purpose.
- g. When a provider invests or transfers the assets of the fund to a home office of a chain organization, or the motherhouse or governing body of a religious order or to other related parties, these assets are considered to be the facility's funds and are subject to all provisions of this section.
- 3. Total funded depreciation from deposits in excess of accumulated depreciation on resident-related assets will be considered as ordinary investments and the income therefrom will be used to offset interest expense.
- 4. Withdrawals for the acquisition of capital assets, the payment of mortgage principal on these assets, and for other capital expenditures are on a first-in, first-out basis. Withdrawals for general operating purposes or for loans to the general fund are made on a last-in, first-out basis.
- 5. The facility may borrow from funded depreciation to obtain working capital for normal operating expenses used for resident care. In addition, the facility may borrow from funded depreciation accounts of related nursing and hospital facilities if the funded depreciation accounts of the related facilities are maintained in accordance with HCFA-15, section 226. The interest incurred by the general fund is allowable provided the loans are necessary and proper, and provided the funds withdrawn have met the six-month funding requirement. If the funds withdrawn do not meet the six-month funding requirement, interest paid on the loan is not an allowable cost.
- 6. Interest paid by the general fund to the funded depreciation account is not an allowable cost if the facility borrows the funds to acquire depreciable assets. The facility is expected to use funded depreciation for that purpose.
- 7. Deposits of funds into the funded depreciation account must be first applied to reduce loans outstanding from the funded depreciation account to the general fund. Until such loans, including related-party loans, are repaid in full, funds deposited in the funded depreciation account will be considered as repayments on the loans and any subsequent interest expense of the general fund to the extent of the repaid loans is not allowable.

8. Available funded depreciation must be withdrawn and used before resorting to borrowing for the acquisition of depreciable assets or other capital purposes. Because it is frequently difficult to time a bond offering or other borrowing to coincide with the exhaustion of available funded depreciation, it is sufficient if available funded depreciation is contractually committed to and expended during the course of construction.
9. Funds are considered available unless committed, by virtue of contractual arrangements, to the acquisition of depreciable assets used to render resident care, or to other capital purposes. Borrowing for a purpose intended by funded depreciation is unnecessary to the extent funded depreciation is available. Thus, interest expense for borrowing up to the amount of available funded depreciation is not an allowable cost.
10. When funded depreciation is used by the facility for other than the acquisition of depreciable assets, other capital purposes related to resident care, or loans to the general fund for current operating costs, the income earned on these funds while on deposit in the funded account will be adjusted in the report year the withdrawal was made. The adjustment will include all offsets not made in prior reporting periods for earnings applicable to these funds.

History: Effective January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-05. Compensation. Compensation may be included in allowable provider costs only to the extent that it represents reasonable remuneration for managerial, administrative, professional, or other services related to the operation of the facility and rendered in connection with patient care. Services which are not related either to direct or indirect patient care are primarily accomplished for the purpose of managing or improving the owner's financial investment and are not allowable. Data necessary to establish the rendering of patient care must include the hours, types, and valuation basis of the work performed.

1. Reasonableness requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions depending upon the facts and circumstances of each case. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, an institution would have had to employ another person to perform them. The services must be pertinent to the operation and sound conduct of the institution. The facility shall demonstrate reasonableness of compensation. The department may use internal revenue service

guidelines as the basis for determining reasonableness Compensation for top management personnel, which is allocated or directly assigned to a facility, will be limited to the highest market-driven compensation of an administrator employed by a freestanding facility during the base year as indexed forward.

2. Items which are considered compensation and includable in the test for reasonable compensation received by any person identified in subsection 3 include, but are not limited to, the following:
 - a. Salary amounts paid for managerial, administrative, professional, and other services.
 - b. Amounts paid by the institution facility for the personal benefits of the person, e.g., housing allowance, flat-rate automobile allowance.
 - c. The cost of assets and services which the person receives from the institution facility.
 - d. Deferred compensation (pension and annuities).
 - e. Supplies and services for the personal use of the person.
 - f. The cost of a domestic or other employee who works in the home of the person.
 - g. Life and health insurance premiums paid for the person.
3. ~~Persons whose compensation will be tested under this subsection include, but are not limited to:~~
 - ~~a. The provider's administrator.~~
 - ~~b. Any person who has an interest in the facility as a sole proprietor, partner, corporate stockholder, or organizer of a nonprofit corporation.~~
 - ~~c. Any person who occupies any position on the provider's governing board or group, however constituted.~~
 - ~~d. Any person who is a bondholder or creditor, or an officer in a corporate bondholder or creditor, to whom or which the provider is obligated to pay in excess of five thousand dollars.~~
 - ~~e. Any person who has an ownership interest in, or is an officer of, any related organization.~~
 - ~~f. Any person within the third degree of relationship to any person identified in subdivisions a through e.~~

4. The department will establish a limit on allowable administrator compensation. An administrator responsible for a facility of less than seventy-five bed capacity shall be subject to one limit. The department shall allow an additional amount for each additional bed in establishing limits for an administrator responsible for a facility of a bed capacity of seventy-five or larger. In establishing limits, the department shall consider the salaries paid to administrators of North Dakota facilities operated or managed by organizations which operate or manage at least twenty nursing facilities, wherever located. Any limits implemented in section 75-02-06-16 will also apply to compensation. Reasonable compensation for a person with a least five percent ownership, persons on the governing board, or any person related within the third degree of kinship to top management personnel must be considered an allowable cost if services are actually performed and required to be performed. The amount to be allowed must be an amount determined by the department to be equal to the amount normally required to be paid for the same services if provided by a nonrelated employee. Reasonableness also requires that functions performed be necessary in that, had the services not been rendered, the facility would have to employ another person to perform them.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; September 1, 1987; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4;

42 USC 1396a(a)(13)+

42 CFR Part 447, Subpart G

75-02-06-06.1. Home office costs.

1. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a provider in itself, it may furnish central administration or other services such as centralized accounting, purchasing, personnel, or management services. To the extent that the home office furnishes services related to resident care to a facility, the reasonable resident-related costs, not to exceed actual costs of such services, are includable in the facility's cost report and are includable as part of the facility's rate.
2. Where the home office makes a loan to or borrows money from one of the components of a chain organization, the interest paid is not an allowable cost and interest income is not used to offset interest expense.
3. Home office costs incurred for expansion of a chain organization must be directly allocated to the appropriate

component of the chain. The costs of abandoned plans are not allowable.

History: Effective January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-07. Related organization.

1. Costs applicable to services, facilities, and supplies furnished to a provider by a related organization may not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere primarily in the local market. Providers shall identify such related organizations and costs in the cost report. **An appropriate statement of cost and allocations shall be submitted with the annual cost report. For cost reporting purposes, management fees will be considered as administrative costs.**
2. A chain organization consists of a group of two or more health care facilities which are owned, leased, or through any other device controlled by one business entity. This includes not only proprietary chains but also chains operated by various religious and other charitable organizations.
3. Home offices of chain organizations vary greatly in size, number of locations, staff, mode of operations, and services furnished to their member facilities. Although the home office of a chain is normally not a provider in itself, it may furnish to the individual provider, central administration or other services such as centralized accounting, purchasing, personnel, or management services. Only the home office's actual cost of providing such services is includable in the provider's allowable costs under the program. Any services provided by the home office which are also included in reported costs as payments to an outside provider will be considered a duplication of costs and not be allowed.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13); 42 CFR Part 447, Subpart 6

75-02-06-08. Rental expense paid to a related organization.

1. A provider may lease a facility from a related organization within the meaning of **the ratesetting principles of reimbursement**. In such case, the rent paid to the lessor by the provider is not allowable as cost unless the rent paid is

less than the allowable costs of ownership. The provider, however, may include allowable costs of ownership of the facility. These costs are depreciation, interest on the mortgage, and real estate taxes.

- 2- In order to be considered an allowable cost, the home office cost must be directly related to those services performed for individual providers and relate to patient care. An appropriate share of indirect costs will also be considered. Documentation as to time or services provided must be available to substantiate cost.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13);

42 CFR Part 447, Subpart E

75-02-06-09. Taxes.

1. General.
 - a- Taxes assessed against the provider, in accordance with the levying enactments of the several states and lower levels of government and for which the provider is liable for payment, are allowable costs. Tax expense may not include fines, penalties, or those taxes listed in subsection 2.
 - b- 2. Whenever exemptions to taxes are legally available the provider is to take advantage of them. If the provider does not take advantage of available exemptions, the expense incurred for such taxes is not recognized as an allowable costs cost under the program.
- 2- The following taxes, which are levied on providers, are not allowable as costs:
 - a- Federal income and excess profit taxes, including any interest or penalties paid thereon.
 - b- State or local income and excess profit taxes.
 - c- Taxes in connection with financing, refinancing, or refunding operation, such as taxes in the issuance of bonds, property transfers, issuance or transfers of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense.
 - d- Taxes such as real estate and sales tax for which exemptions are available to the provider.

- e. Special assessments on land which represent capital improvements, such as sewers, water, and pavement, must be capitalized and may be depreciated over their useful life.
 - f. Taxes on property which is not used in the provision of covered services.
 - g. Taxes, such as sales taxes, levied against the patient and collected and remitted by the provider.
 - h. Self-employment (FICA) taxes applicable to individual proprietors, partners, members of a joint venture, etc.
3. Special assessments in excess of one thousand dollars, which are paid in a lump sum, must be capitalized and depreciated. Special assessments not paid in a lump sum may be expensed as billed by the taxing authority.

History: Effective September 1, 1980; amended effective December 1, 1983; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13);
42 CFR Part 447, Subpart E

75-02-06-10. Bad debts. Bad debts, charity, and courtesy allowances may not be included in allowable costs.

- 1. Bad debts for charges incurred on or after January 1, 1990, and fees paid for the collection of those bad debts, are allowable provided all the requirements of this subsection are met:
 - a. The bad debt results from nonpayment of the payment rate or part of the payment rate.
 - b. The facility documents that reasonable collection efforts have been made, the debt was uncollectible, and there is no likelihood of future recovery. Reasonable collection efforts include pursuing all avenues of collection available to the facility, including liens and judgments. In instances where the bad debt is owed by a person determined to have made a disqualifying transfer or assignment of property for the purpose of securing eligibility for medical assistance benefits, the facility shall document that it has made all reasonable efforts to secure payment from the transferee, including the bringing of an action for a transfer in fraud of creditors.
 - c. The collection fee does not exceed the amount of the bad debt.

d. The bad debt does not result from the facility's failure to comply with federal and state laws, state rules, and federal regulations.

e. The bad debt does not result from nonpayment of a private room rate in excess of the established rate or charges for special services which are not included in the established rate.

f. The facility has an aggressive policy of avoiding bad debt expense which will limit potential bad debts. The facility shall document that the facility has taken action to limit bad debts for individuals who refuse to make payment. In no instances may allowable bad debt expense exceed one hundred twenty days of resident care for any one individual.

2. Finance charges on bad debts which are allowed in subsection 1 are allowable if the finance charges have been offset as interest income in prior years.

History: Effective September 1, 1980; amended effective December 1, 1983; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)+

~~42 CFR Part 447, Subpart E~~

75-02-06-11. Startup costs. In the first stages of operation, a new institution facility incurs certain costs in developing its ability to care for patients residents prior to admission of patients. Staff is obtained, organized, and other operating costs are incurred during this time of preparation which cannot be allocated to patient resident care during that period because there are no patients residents receiving services. ~~Therefore, it is proper that such actual costs, commonly referred to as startup costs,~~ Such costs are commonly referred to as startup costs. Actual allowable startup costs may be considered as deferred charges under the program and allocated over a number of periods which benefit from such costs. Where a provider facility has properly capitalized startup costs as a deferred charge, amortization of such the startup costs will be recognized as allowable costs depreciated amortized over sixty consecutive months starting with the month in which the first patient resident is admitted for treatment.

History: Effective September 1, 1980; amended effective December 1, 1983; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)+

~~42 CFR Part 447, Subpart E~~

75-02-06-12. ~~Adjustment to cost and cost limitation. Reasonable patient-related costs will be determined in accordance with health care~~

financing administration manual 15 (HCFA-15) and instructions issued by the department. Any conflict between the provision of HCFA-15 and instructions issued by the department will be controlled by the instructions issued by the department Offsets to cost.

1. Income to offset cost.

a. Several items of income to the home, whether in cash or in any other form, will be considered as offsets against various costs as recorded in the books of the facility. Any income which is received by the home for reimbursements of cost facility, with the exception of the basic daily established rate, income from payments made under the Job Training Partnership Act, and income from charges to private pay patients for care items which are included in the title XIX rate residents for private rooms or special services, will be offset against costs. Any reimbursement not listed below, which may be classified as an offset, must be shown as such on the cost report and costs reduced accordingly. Items of income, whether in cash or in any other form, to offset cost include, but are not limited to, the following and, in the event that income exceeds costs, must be offset to all costs on the basis of percentage of total remaining nonoffset costs up to the total of the appropriate actual cost. If actual costs are not identifiable, income will be offset up to the total of costs described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each cost category. These sources of income include, but are not limited to:

(1) a. "Activities income". Income from the activities department and the gift shop will be offset to activity costs.

(2) "Confections income". All income from the sale of pop, candy, or other items.

(3) b. "Dietary income". Amounts received from or on behalf of employees, guests, or other nonpatients nonresidents for lunches, meals, or snacks will be offset to dietary costs.

(4) c. "Drugs or supplies income". Amounts received from employees, doctors, or others not admitted as patients residents will be offset to nursing supplies.

(5) d. "Insurance recoveries income". Any amount received from insurance for a loss incurred shall be offset against costs reported in the current year the appropriate cost category, regardless of when the cost was incurred, if the facility did not adjust the basis for depreciable assets.

- ←6) e. "Interest or investment income". Interest received on investment investments, except amounts allowable as earned on funded depreciation or from earnings on noncommingled gifts where the identity remains intact, shall be offset to interest expense.
- ←7) f. "Laundry income". All amounts received for services rendered to or on behalf of employees, doctors, or others will be offset to laundry costs.
- ←8) g. "Private duty nurse reimbursement income". All reimbursement income received for the providing of a private duty nurse will be offset to nursing salaries.
- ←9) "Purchase discounts". All discounts received from vendors on purchases included in costs.
- ←10) "Rebates and refunds income". Amounts received on expense or cost items must be offset against the appropriate cost.
- ←11) h. "Rentals of nursing home facility space income". Any revenues income received from outside sources for the use of nursing home facility space and equipment will be offset to property costs.
- ←12) i. "Telegraph and telephone income". All revenues income received from patients residents, guests, or employees will be offset to indirect costs. Income from emergency answering services need not be offset.
- ←13) All therapy and other professional services revenue unless services rendered to medical assistance program eligible patients and outpatients are identified and revenue from those services offset to the related cost.
- j. "Therapy income". Income from medicare part B and outpatient services will be offset to therapy costs. If therapy income is not identified by source, all therapy income will be offset.
- k. "Vending income". Income from the sale of beverages, candy, or other items will be offset to the cost of the vending items or, if the cost is not identified, all vending income will be offset to administrative costs.
- l. "Bad debt recovery". Income for bad debts which have been previously claimed shall be offset to administrative costs in the year of recovery.
- m. "Other cost-related income". Miscellaneous income, including amounts generated through the sale of a

previously expensed or depreciated item, e.g., supplies or equipment, must be offset to the cost category where the item was expensed or depreciated.

- b. 2. Payments to a provider by its vendor will ordinarily be considered treated as purchase discounts, allowances, refunds, or rebates in determining allowable costs under the program even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. However, such payments may represent a true donation or grant. Examples include, but are not limited to, when: (1) they are made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited; or (2) they are in addition to discounts, refunds, or rebates, which have been customarily allowed under arrangements between the provider and the vendor; (3) the volume or value of purchases is so nominal that no relationship to the contribution can be inferred; (4) the contributor is not engaged in business with the provider or a facility related to the provider. The provider must provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.
- c. 3. Where an owner or other official of a provider directly receives from a vendor monetary payments or goods or services for the owner's or official's own personal use as a result of the provider's purchases from the vendor, the value of such payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
- d. 4. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to the costs of the provider in accordance with the instructions above. These should not be treated as income of the central purchasing function or used to reduce the administrative costs of that function. Such administrative costs are, however, properly allocable to the facilities serviced by the central purchasing function.
- e. 5. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.

(+) "Purchase discounts" include cash discounts, trade, and quantity discounts. "Cash discount" is for prepaying or paying within a certain time of receipt of invoice. "Trade discount" is a reduction of cost granted certain customers. "Quantity discounts" are reductions of price because of the size of the order.

(2) Allowances are reductions granted or accepted by the creditor for damage, delay, shortage, imperfection, or other cause, excluding discounts and refunds.

(3) Refunds are amounts paid back by the vendor generally in recognition of damaged shipments, overpayments, or returned purchases.

(4) Rebates represent refunds of a part of the cost of goods or services.

(5) "Other cost-related income" includes amounts generated through the sale of a previously expensed item, e.g., supplies or equipment.

2. Costs not related to patient care are costs which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Such costs are not allowable in computing reimbursable costs. They include, but are not limited to, the following:

a. Costs which are unallowable when incurred by a facility are also unallowable for a home office and cannot be allocated to facilities in a chain organization.

b. Certain corporate costs, such as stockholder servicing costs, organization costs, or reorganization costs are not related to patient care and are not allowable.

c. Costs, in excess of forty-five dollars per bed per year, incurred in the form of dues, contributions, and advertising exclusive of personnel procurement.

d. The full cost of items or services such as telephone, television, and radio which are located in patient accommodations and which are furnished solely for the personal comfort of the patients are not includable in allowable costs.

e. Fundraising costs, including salaries, advertising, promotional or publicity costs incurred for such a purpose are not includable in allowable costs.

f. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to patient care.

g. 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.

- h. Costs which are incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which become an element in the subcontractor's or lessor's charge to the provider, if such costs would not have been allowable had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property, provided, however, that no facility shall have a particular item of cost disallowed under this subdivision if that cost arises out of a transaction which was completed before July 18, 1984.
 - i. The cost of providing meals and lodging to nursing home personnel living on premises in excess of charges.
 - j. Depreciation expense for facility assets which are not related to patient care.
 - k. 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 subdivision.
 - l. Non-long term care operations and associated administrative costs.
 - m. Medicare utilization review costs.
3. All costs for services reimbursed by the department directly to the provider, e.g., pharmacy and therapies, must be excluded from the rate calculation.
4. Travel costs involving the use of vehicles not exclusively used by the facility are allowable within the limits of this subsection.
- a. Vehicle travel costs may not exceed the amount authorized by North Dakota Century Code section 54-06-09 for mileage.
 - b. The facility must support vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to patient care.
 - c. The facility must document any payment made to service or support the use of a vehicle not exclusively used by the facility.
5. Travel costs other than vehicle-related costs are allowable provided the items of cost do not exceed the maximum allowed

pursuant to North Dakota Century Code section ~~44-08-04~~ and the facility supports the travel costs with sufficient documentation to establish that the purpose of the travel is related to patient care.

6. The fees paid to members of a board of directors for meetings attended shall be allowed in an amount not to exceed the compensation paid, per day, to members of the legislative council, pursuant to North Dakota Century Code section ~~54-35-10~~, plus travel at a rate not to exceed the maximum allowed pursuant to North Dakota Century Code sections ~~44-08-04~~ and ~~54-06-09~~. Normally, no more than twelve meetings per fiscal year will be considered reasonable. No additional compensation will be allowed for service of employees on the board of directors.
7. All plans within the definition of deferred compensation and pension plans set forth in HGFA-15 sections ~~2140.1~~ and ~~2142.1~~, respectively, shall be considered in the determination of allowable costs. No provisions of these plans may discriminate in favor of certain employees, such as employees who are officers, stockholders, supervisors, or highly paid personnel. In order to be considered an allowable cost, the payment reported must benefit all eligible employees and be based on the same payment structure. A plan approved by the United States department of labor as nondiscriminatory will be treated as acceptable under this subsection.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; June 1, 1988; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)+
42 CFR Part 447, Subpart E

75-02-06-12.1. Nonallowable costs. Nonallowable costs include, but are not limited to:

1. Costs described as nonallowable under North Dakota Century Code section 50-24.4-07.
2. Interest charges on fines or penalties, bank overdraft charges, and late payment charges.
3. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying costs, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions made by governmental agencies. Where the breakdown of dues charged to a facility is not provided, the entire cost is nonallowable.

4. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, i.e., Lions, Chamber of Commerce, or Kiwanis, in excess of fifteen hundred dollars per cost reporting period.
5. Home office costs which would be nonallowable if incurred by a facility.
6. Stockholder servicing costs, including, but not limited to, annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements for security exchange commission proposes, stock transfer agent fees, and stockholder and investment analysis.
7. Corporate costs which are not related to resident care, including reorganization costs, costs associated with acquisition of capital stock, and costs relating to the issuance and sale of capital stock or other securities.
8. The full cost of items or services such as telephone, radio, and television, including cable hookups or satellite dishes, located in resident accommodations, excluding common areas, which are furnished solely for the personal comfort of the residents.
9. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.
10. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to resident care.
11. 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.
12. Costs which are incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which become an element in the subcontractor's or lessor's charge to the provider, if such costs would not have been allowable had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property; provided, however, that no provider shall have a particular item of cost disallowed under this subsection if that cost arises out of a transaction which was completed before July 18, 1984.

13. The cost, in excess of charges, of providing meals and lodging to facility personnel living on premises.
14. Depreciation expense for facility assets which are not related to resident care.
15. Nonnursing facility operations and associated administrative costs.
16. Direct costs or any amount claimed to medicare for medicare utilization review costs.
17. All costs for services paid directly by the department to an outside provider.
18. Travel costs involving the use of vehicles not exclusively used by the facility are allowable only within the limits of this subsection.
 - a. Vehicle travel costs may not exceed the amount established by the internal revenue service.
 - b. The facility shall support vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to resident care.
 - c. The facility shall document all costs associated with a vehicle not exclusively used by the facility.
19. Travel costs other than vehicle-related costs are allowable provided they are supported, reasonable, and related to resident care.
20. The fees paid to members of a board of directors for meetings attended must be allowed in an amount not to exceed the compensation paid, per day, to members of the legislative council, pursuant to North Dakota Century Code section 54-35-10. No additional compensation will be allowed for service of employees on the board of directors. Travel costs associated with meetings of boards of directors are allowable to the extent such meetings are held in a location where the organization has a nursing facility.
21. The costs of deferred compensation and pension plans that discriminate in favor of certain employees, excluding the portion of the cost which relates to costs that benefits all eligible employees.
22. Premiums for top management personnel life insurance policies, except that such premiums must be allowed if the policy is included within a group policy provided for all employees, or if such a policy is required as a condition of mortgage or

- loan and the mortgagee or lending institution is listed as the beneficiary.
23. Personal expenses of owners and employees, such as vacations, boats, airplanes, personal travel or vehicles, and entertainment.
24. Costs which are not adequately documented. Adequate documentation includes written documentation, date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities.
25. The following taxes:
- a. Federal income and excess profit taxes, including any interest or penalties paid thereon.
 - b. State or local income and excess profit taxes.
 - c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes in the issuance of bonds, property transfers, issuance or transfer of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense.
 - d. Taxes such as real estate and sales tax for which exemptions are available to the provider.
 - e. Taxes on property which is not used in the provision of covered services.
 - f. Taxes, such as sales taxes, levied against the residents and collected and remitted by the provider.
 - g. Self-employment (FICA) taxes applicable to individual proprietors, partners, members of a joint venture, etc.
26. The unvested portion of a facility's accrual for sick or annual leave.
27. The cost, including depreciation, of equipment which was purchased with funds received from a local or state agency, exclusive of any federal funds.
28. Hair care, other than routine hair care, when requested by a resident.
29. The direct costs of operating a pharmacy.

History: Effective January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-13. Cost allocation and classification.

1. Where services of the various cost centers are jointly used by any combination of facilities or in the event that services are provided which result in costs that are not includable in allowable costs, the following cost allocation methods must be used. In cases where more than one method of allocation is available within or among cost centers, the department shall have discretion to apply the method which, in its opinion, reflects the most reasonable cost based upon the data available at the time of audit.
 - a. Nursing salaries must be reported on actual costs. Other nursing service costs must be allocated on patient days.
 - b. Dietary costs must be allocated on the basis of meals served to patients.
 - c. Housekeeping costs must be allocated on the basis of patient days or on usable square footage.
 - d. Laundry and linen costs must be allocated on the basis of patient days or on pounds [kilograms] of laundry if records are maintained to reflect a study which is performed at regular intervals on an ongoing basis.
 - e. Plant operation costs must be allocated on the basis of available bed days, or on the basis of usable square footage of space.
 - f. Property costs must be allocated on the basis of available bed days, or on the basis of usable square footage of space.
 - g. Administration costs must be allocated on the basis of percentage of total cost, other than administration, in each facility.
 - h. In facilities combining hospital and nursing home services, medical record costs must be allocated by number of admissions.
2. If certain costs within a particular cost center can be directly identified with the nursing home, then they are not subject to allocation procedures as previously outlined. The remaining costs within that cost center must be allocated according to cost allocation methods as described previously. Except for medicaid adjustments not considered by medicare, the costs allocated by the methods provided by this section

shall equal those costs which are nursing home costs on the medicare report. The medicaid rate may be subsequently adjusted to recognize adjustments by medicare.

3. Allocation procedures for nursing homes combined with a hospital and facilities with dual licenses will be those set forth in this chapter.
4. Except with respect to employee costs directly allocated through time studies or similar allocation methods, the proposed allocation of costs identified in this subsection must be approved by the department's medical services division prior to the submission of a budget or cost report used to establish a rate. An approved allocation method may be used by the facility obtaining approval in fiscal periods subsequent to the period with respect to which the approval was received unless the approval is withdrawn or the allocation method is altered in any material respect.
 - a. Employee costs related to employees who work in areas for which there is more than one cost center.
 - b. Home office costs related to home office services allocated to a benefiting cost center other than administration.
 - c. Costs allocated between patient related costs and non-patient related costs.
 - d. Costs allocated between services provided at more than one level of care where the provider furnishes care at different levels under separate provider numbers.
Repealed effective January 1, 1990.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; September 1, 1987.

General Authority: NDCG 50-24.1-04

Law Implemented: 42 USC 1396a(a)(13); 42 CFR Part 447, Subpart 6

75-02-06-14. Patient census Resident days.

1. A patient resident day is any day that the facility has received remuneration for which service is provided or for which payment is ordinarily sought for the available bed. The amount of remuneration has no bearing on whether a day should be counted or not. Examples of days that must be included in census, providing they have been paid for, are hospital days and therapeutic leave days. Hospital stay days in excess of fifteen consecutive days are not billable to the department and are not counted as resident days.

2. A daily census record must be prepared and maintained by the facility to allow for proper audit of the census data Adequate census records must be prepared and maintained on a daily basis by the facility to allow for proper audit of the census data. The daily census records must include:
 - a. Identification of the resident.
 - b. Entries for all days. Entries are not to be made just by exception.
 - c. Identification of type of day, i.e., hospital, in-house.
 - d. Identification of the resident's classification.
 - e. Monthly totals by resident, by classifications for all residents, and by type of day.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13); 42 CFR Part 447, Subpart 6

75-02-06-15. Nursing care. Routine nursing care services are those services included by the provider in a daily services charge usually referred to as the room and board charge. The following types of items and services in addition to room dietary and medical social services must be considered to be routine for purposes of medicaid cost reporting even though they may be considered ancillary by the facility:

- 1- All general nursing services including but not limited to administration of oxygen and related medication; hand feeding; incontinency care; tray service; enemas; etc.
- 2- Items which are furnished routinely and relatively uniformly to all patients; e.g., patients' gowns; water pitchers; basins; bedpans; etc.
- 3- Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities; e.g., alcohol; applicators; cotton balls; band-aids; antacids; aspirins; (and other nonlegended drugs ordinarily kept on hand); suppositories; tongue depressors; paper tissues; deodorants; mouthwashes; kleenex; toothpaste; denture cleaner; etc.
- 4- Items which are utilized by individual patients which are reusable and expected to be available in the facility; e.g., ice bags; bedrails; canes; crutches; walkers; wheelchairs; traction equipment; and other durable medical equipment.

5. Items which, while not listed above, came within the definitions set forth in the personal needs guidelines of the Guidelines for Routine Drugs, Supplies, and Equipment for Skilled Nursing and Intermediate Care Facilities as issued by the medical services division for any items which may not have been covered in the above but may come within the definitions set forth in the personal needs guidelines.
6. Special dietary supplements used for tube feeding or oral feeding such as elemental high nitrogen diet, even if written as a prescription item by a physician.
7. Laundry services considered necessary for the proper care and appearance of the patient. Repealed effective January 1, 1990.

History: Effective September 1, 1980; amended effective December 1, 1983; September 1, 1987.

General Authority: ~~NBCE 50-24.1-04~~

Law Implemented: ~~42 USC 1396a(a)(13); 42 CFR Part 447, Subpart 6~~

75-02-06-16. Reimbursement Rate determinations.

1. The method of determining the reimbursement rate per day will be through the use of the prospective ratesetting system. The system requires that the rate be established during the rate period in which it will be effective with retroactive adjustment to the beginning of the rate period. Each cost category actual rate is calculated using the allowable historical operating costs and adjustment factors provided for in subsection 4 divided by standardized resident's days for the direct care cost category and resident's days for other direct care, indirect care, and property cost categories. The actual rate as calculated is compared to the limit rate for each cost category to determine the lesser of the actual rate or the limit rate. The lesser rate for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification. The lesser of the actual rate or the limit rate for other direct care, indirect care, and property costs, and the adjustments provided for in subsections 2 and 3 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.
2. The determination of a prospective rate for all accommodations begins with the actual cost of the facility's operations for the report period. Once the reasonable patient-related costs from the report period are determined, adjustments and limitations are applied to the historical cost to determine the prospective rate.

3. The historical costs combined with the adjustments and limitations take into consideration the economic conditions and trends during the rate period. Costs which are incurred to meet certification standards shall be allowable and included in the determination of the rate. Rate adjustments to provide appropriate compensation may be requested where major unforeseeable expenses are incurred. Such requests may be made to the director of medical services, who shall determine if the expense is patient related and beyond the control of those responsible for the management of the facilities. The following adjustment methods will be used:

- a. Property costs will be included in the rate at the historical amount unless adjusted in accordance with these rules.
- b. The other costs of the facility will be projected based upon the historical cost plus the annual percent of increase, if any, in the consumer price index.

For a facility with an actual rate below the limit rate for indirect care costs, an amount equal to seventy percent times the difference between the actual rate, exclusive of inflation indices, and the limit rate, exclusive of current inflation indices, up to a maximum of one dollar and eighty-five cents will be included as part of the indirect care cost rate.

4. 3. Limitations.

- a. The department shall accumulate and analyze statistics on costs incurred by the nursing facilities. These statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. These limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. It shall be the option of the department to implement the ceilings so mentioned at any time based upon the information available and under guidelines required within the regulations of title XIX.
- b. At such time as federal regulations establish a ceiling on medicare rates for skilled nursing facilities, that ceiling shall also be considered the maximum for title XIX payment The department will review, on an ongoing basis, aggregate payments to nursing facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under medicare payment principles. If aggregate payments to nursing facilities exceed estimated payments under

medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under medicare payment principles.

c. Limits. All facilities except those facilities described in North Dakota Century Code section 50-24.4-13 will be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. This limit rate will be established using allowable historical operating costs for the report year ended June 30, 1988, and adjustment factors for the rate year as set forth in subsection 4. These limit rates may not be rebased prior to the rate periods beginning January 1, 1993. The department will review economic trends and factors affecting nursing facilities to determine when rebasing of the limits will occur.

(1) The limit rate for each of the cost categories will be established using the median rate for the appropriate cost category plus a fixed percentage of the median rate. The fixed percentage is to be determined as follows:

(a) Historical costs for June 30, 1988, as adjusted, will be used to set rates for all facilities in the direct care, other direct care, and indirect care cost categories.

(b) The rates for each cost category will be ranked from low to high. The ninetieth percentile ranking will be determined for the direct care and other direct care cost categories, and the seventy-fifth percentile ranking will be determined for the indirect care cost category.

(c) The fixed percentage will be determined by subtracting the median rate from the percentile ranking rate and dividing the difference by the median rate.

(d) The fixed percentage established under subparagraph c of this paragraph will be used to determine limits if and when rebasing of the limit year occurs.

(2) A facility who has an actual rate that exceeds the limit rate for a cost category will receive the limit rate.

(3) For the rate years beginning January 1, 1990, and ending December 31, 1992, a facility whose actual rate exceeds the limit rate for a cost category will

receive a percentage of the difference between the actual rate and the limit rate as follows:

(a) For the rate year beginning January 1, 1990, forty-five percent of the difference will be included in the facility's rate.

(b) For the rate year beginning January 1, 1991, forty-five percent of the difference will be included in the facility's rate.

(c) For the rate year beginning January 1, 1992, twenty-five percent of the difference will be included in the facility's rate.

4. Adjustment factors for direct care, other direct care, and indirect care costs.

a. The department will utilize an independent economic forecast method of predicting the factors to be used to adjust historical allowable costs. Where possible, adjustment factors specific to North Dakota will be used to establish the adjustment for each rate year. If specific North Dakota data is not available, regional-specific or national data will be used to establish adjustment factors for each rate year. Individual adjustment factors for the cost components included in this subdivision will be calculated for each rate year.

(1) Salaries.

(2) Employment benefits.

(3) Food.

(4) Utilities.

(5) Drugs and nursing supplies.

(6) Other costs.

An adjustment factor will be separately calculated for direct care, other direct care, and indirect care costs based on the forecasted increase or decrease in the cost components for the eighteen months from the end of the report year to the end of the next rate year.

b. The same methodology will be used to adjust the previous year's established limit rates for direct care, other direct care, and indirect care costs.

5. Rate adjustments.

a. Desk audit rate.

- (1) The cost report will be reviewed taking into consideration the prior year's adjustments. The facility will be notified by telephone or mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department will review the information and make adjustments which are determined to be appropriate.
- (2) The desk audit rate will be effective January first of each rate year and will continue in effect until a final rate is established.
- (3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b of this subsection, private-pay rates may not exceed the desk audit rate except as provided for in North Dakota Century Code section 50-24.4-19.
- (4) No reconsideration will be given by the department for the desk rate unless the facility has been notified that the desk rate is the final rate.

b. Final rate.

- (1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate will become the final rate.
- (2) The final rate will include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of five cents per day or an aggregate of one thousand dollars for the facility, whichever is less, that are found during a field audit or are reported by the facility within twelve months of the rate yearend.
- (3) The private-pay rate must be adjusted to the final rate in the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subparagraph c of paragraph 4 of subdivision b of this subsection.
- (4) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures will be used:
 - (a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate

and resulting in a change of at least five cents per day will result in a change to the final rate. The change will be applied retroactively as provided for in this section.

(b) Adjustments, errors, or omissions in excess of one thousand dollars for the facility found later than twelve months after the establishment of the final rate will be included as an adjustment in the report year that the adjustment, error, or omission was found.

c. Adjustment of the total payment rate. The final rate as established will be retroactive to January first of the rate year, except with respect to rates paid by private-paying residents. Rates paid by private-pay residents must be retroactively adjusted and the difference refunded to the resident, if the desk audit rate exceeds the final rate by at least twenty-five cents per day.

5- 6. Rate payments.

- a. The rate as established shall be considered as payment for all accommodations and includes all items designated as routinely provided for each level of care. No payments may be solicited or received from the patient resident or any other person to supplement the rate as established.
- b. The rate as established shall only be paid if the private pay patients' rates by the department only if the rate charged to private-pay residents for semiprivate accommodations equal or exceed equals the established rate for medical services patients. The rate being charged private pay patients at the time the services were provided will govern. In cases where private pay patients are not charged a daily rate, the daily charge will be computed by dividing the total private pay charges for each month by the private pay census for each month. If at any time the facility discounts the private pay rate for those periods of time that the patient resident is not in the facility, the discounted rate will be the maximum chargeable to medical services patients. If the discounting policy creates a situation in which the private rate is less, then all medical assistance patients shall be afforded a discount in the amount of the difference between the discounted private rate and the established medical assistance rate the department for the same service, i.e., hospital or leave days.
- c. If the medical assistance reimbursement established rate exceeds the private payment pay rate for a particular level of care, on any given date, the facility shall

immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund will be the difference between the private pay established rate and medical assistance rate the rate charged the private-pay resident times the number of medical assistance patient resident days paid during the period in which the medical assistance reimbursement established rate exceeded the private pay rate charged to private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision will also apply to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.

- d. Peer groupings, limitations, or adjustments which are based upon data received from or relating to more than one provider facility will be effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments will not be used to change such peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

6- 7. Partial year.

- a. For facilities changing ownership during the rate period, the rate established for the previous owner will be retained. The rate for the next rate period following the change in ownership will be established as follows:

- (1) For a facility with four or more months of operation under the new ownership during the report year, a cost report for the period will be used.

- (2) For a facility with less than four months of operations under the new ownership during the report year, the rate established for the previous owner will be indexed forward using the adjustment factors as set forth in subsection 4.

- b. For existing facilities adding beds, the reimbursement rate for the new beds will be the same as for the other similarly licensed beds in the facility. For an existing facility with a capacity increase and for a new facility, the department will establish an interim rate equal to one hundred ten percent of the sixtieth percentile of the direct care, other direct care, and indirect care rates not to exceed the limit rate, plus an amount calculated using paragraph 3 of subdivision c of subsection 3 of this section, plus the property rate. The property rate will be calculated using projected property costs and

certificate of need projected census. The interim rate will be in effect for no less than four months and no more than fifteen months. Costs for the period in which the interim rate is effective will be used to establish a final rate, which will be limited to the lesser of the interim or actual rate. If the final rate for direct care, other direct care, and indirect care costs is less than the interim rate for those costs, a retroactive adjustment as provided for in subsection 5 will be made. No retroactive adjustments will be made for property costs. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs will be the greater of actual census or certificate of need projected census.

- c. New facilities will submit, for departmental approval, a proposed budget for operations for the period, at least three months but not more than fifteen months in duration, which ends on June thirtieth. The rate established based upon the approved budget shall be final and shall continue in effect until the beginning of the rate period next following after the end of the report period which coincides with the end of the budget period. For a facility with renovations or replacements in excess of one hundred thousand dollars, and excluding capacity increases, the rate established will be the direct care, other care direct, and indirect care rates based on the last report year, plus a property rate calculated based on projected property costs and census from the last report year. The projected property rate will be effective at the time the project is completed and placed into service.
- d. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.

7. Adjustments and reconsideration procedures.

- a. Rate adjustments may be made to correct errors subsequently determined and shall also be retroactive to the beginning of the facility's rate period.
- b. An adjustment must be made for a facility which has terminated participation in the program and has disposed of its depreciable assets or which has changed ownership. In this case the regulations pertaining to gains and losses on disposable assets will be effective.

c. Any requests for reconsideration of the rate must be filed with the medical services division for administrative consideration within thirty days of the date of the rate notification.

8. One-time adjustments.

a. Adjustments to meet certification standards.

- (1) The department may provide for an increase in the established rate for additional costs that are incurred to meet certification standards. The survey conducted by the state department of health and consolidated laboratories must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that will be increased to correct the deficiencies cited in the survey process.
- (2) The facility must submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health and consolidated laboratories. The request must contain the following information:
 - (a) A statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health and consolidated laboratories' certification survey.
 - (b) The number of new staff or additional staff hours and the associated costs that will be required to meet the certification standards.
 - (c) A detailed list and implementation of any other costs necessary to meet survey standards.
- (3) The department will review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate will be adjusted upward not to exceed the limit rate.
- (4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines that the funds were not utilized for the intended purpose, an adjustment will be made in accordance with subsection 5.

b. Adjustments for unforeseeable expenses.

- (1) The department may provide for an increase in the established rate for additional costs that are incurred to meet major unforeseeable expenses. Such expenses must be resident related and must be beyond the control of those responsible for the management of the facility.
- (2) The facility must submit a written request containing the following information to the medical services division within sixty days after first incurring the unforeseeable expense:
 - (a) An explanation as to why the facility believes the expense was unforeseeable.
 - (b) An explanation as to why the facility's management believes the expense was beyond the managerial control of the facility.
 - (c) A detailed breakdown of the unforeseeable expenses by expense line item.
- (3) The department will base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on their background and knowledge of nursing care industry and business trends.
- (4) The department will review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate will be adjusted upward not to exceed the limit rate.
- (5) Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not utilized for the intended purpose, an adjustment will be made in accordance with subsection 5.

c. Adjustment to historical operating costs.

- (1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 of this subdivision and when it has been determined that the facility cannot meet the minimum standards through reallocation of costs and efficiency incentives.

- (2) The following conditions must be met before a facility can receive the adjustment:
- (a) The facility shall document that based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day.
 - (b) The facility shall document that all available resources, including efficiency incentives, if used to increase nursing hours, are not sufficient to meet the minimum standards.
 - (c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received. The plan must include the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.
- (3) The adjustment will be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase will be divided by standardized resident days and the amount calculated will be added to the actual rate. This rate will then be subject to any rate limitations that may apply.
- (4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment will be adjusted in accordance with the methodologies set forth in subsection 5.
- (5) If the actual cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement will be made.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13); 42 CFR Part 447, Subpart E

75-02-06-17. Appeals. A provider dissatisfied with the rate established under this chapter may appeal. An appeal may be perfected by mailing or delivering the information described in subsections 4 through 5 to the appeals referee supervisor, department of human services, state capitol, Bismarck, North Dakota, so that the mailed or

delivered material arrives at the office of the appeals referee supervisor on or before five p.m. on the thirty-first day after the date of the determination of the medical services division made with respect to a request for reconsideration. An appeal under this section is perfected only if accompanied by written documents including all the following information:

1. A copy of the letter received from the medical services division advising of that division's decision on the request for reconsideration.
2. A statement of each disputed item and the reason or basis for the dispute.
3. A computation and the dollar amount which reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item.
4. The authority in statute or rule upon which the appealing party relies for each disputed item.
5. The name, address, and telephone number of the person upon whom all notices will be served regarding the appeal.

Classifications.

1. Any resident, except respite care residents, occupying a licensed nursing facility bed must have a resident classification review.
2. Residents will be classified in one of sixteen classes based on a resident classification review. If no resident classification review is performed for a resident, except for respite care residents, the resident must be classified as special care B for purposes of determining standardized resident days. Residents, except for respite care residents, who have not been classified must be billed at the reduced physical functioning A established rate. Respite care residents who are not classified will be given a weight of one and five-tenths when determining standardized resident days.
3. Reviews must be conducted as follows:
 - a. The facility will review the resident within the first seven days after any admission or return from a hospital stay.
 - b. The facility will review the resident after twenty-five days, but within thirty days after any admission or return from a hospital stay.
 - c. The facility will review each resident twice each year. The reviews will be conducted six months apart and will be

done according to a schedule established by the department for each report year.

d. The seven-day reviews will take precedence over the thirty-day reviews and biannual reviews, and thirty-day reviews will take precedence over the biannual reviews. For example, if resident A was admitted on June first and the annual medicaid review was on June third, resident A would not be included in the June third review. On the other hand, if the annual medicaid review was on July third, resident A would be included, even though he or she had just had a thirty-day facility review on June thirtieth.

4. The resident classification review is to be completed based on the following criteria:

a. Assign point values for a resident's activities of daily living in the areas of:

(1) Eating - the process of getting food by any means into the body.

(2) Transfer - the process of moving between positions.

(3) Toileting - all processes involved with toileting.

b. Determine each resident's clinical group using the following hierarchy of criteria:

(1) Heavy rehabilitation - to qualify, a resident must require and receive restorative physical or occupational therapy five times per week for a minimum of two and one-half hours per week or requires and is receiving intensive bowel or bladder retraining. Residents receiving therapy which is separately reimbursable by a third party cannot be included in this group.

(2) Special care - to qualify for special care, a resident must not qualify as heavy rehabilitation and must have an activity of daily living score of five or more and one or more of the following conditions or treatments:

(a) Stage 4 decubitus.

(b) Comatose.

(c) Suctioning.

(d) Nasal gastric feeding.

- (e) Parenteral feeding.
 - (f) Quadriplegia.
 - (g) Multiple sclerosis.
 - (h) Ventilator dependent.
- (3) Clinically complex - to qualify for clinically complex, a resident must not qualify as special care and must have one or more conditions or treatments characteristic of special care with an activity of daily living score of three or four; or must not qualify for special care and must have one or more of the following conditions or treatments:
- (a) Dehydration.
 - (b) Internal bleeding.
 - (c) Stasis ulcer.
 - (d) Terminally ill.
 - (e) Daily oxygen.
 - (f) Wound care.
 - (g) Chemotherapy.
 - (h) Transfusion.
 - (i) Dialysis.
 - (j) Daily respiratory care.
 - (k) Cerebral palsy.
 - (l) Urinary tract infection.
 - (m) Hemiplegia.
- (4) Special behavioral needs - to qualify for special behavioral needs, a resident must not qualify for clinically complex and must have one of the following conditions:
- (a) Verbal disruption - level 4+.
 - (b) Physical aggression - level 4+.
 - (c) Disruptive, infantile, or socially inappropriate - level 4+.

(d) Hallucinations - level 2+.

(5) Reduced physical functioning - a resident who does not qualify for special behavior will be classified as reduced physical functioning. For a resident who has a level 4+ rating for general behavior, one point will be added to the activity of daily living score assigned in subdivision a of subsection 4.

5. Based on the resident classification review, each resident will be classified into a case-mix class with a corresponding case-mix weight as follows:

a. Heavy rehabilitation A; case-mix weight: 1.91.

b. Heavy rehabilitation B; case-mix weight: 2.24.

c. Special care A; case-mix weight: 2.45.

d. Special care B; case-mix weight: 2.67.

e. Clinically complex A; case-mix weight: 1.17.

f. Clinically complex B; case-mix weight: 1.81.

g. Clinically complex C; case-mix weight: 2.12.

h. Clinically complex D; case-mix weight: 2.63.

i. Special behavioral needs A; case-mix weight: 1.16.

j. Special behavioral needs B; case-mix weight: 1.48.

k. Special behavioral needs C; case-mix weight: 1.90.

l. Reduced physical functioning A; case-mix weight: 1.00.

m. Reduced physical functioning B; case-mix weight: 1.29.

n. Reduced physical functioning C; case-mix weight: 1.48.

o. Reduced physical functioning D; case-mix weight: 1.72.

p. Reduced physical functioning E; case-mix weight: 2.21.

6. The classification is effective the date the review is completed in all cases except for the admission review. The admission review is effective the date of admission.

History: Effective September 1, 1987; amended effective January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13); 42 CFR 447.253

75-02-06-18. Application. This chapter shall be applied, in rate periods beginning on and after October 1, 1987, in the establishment and determination of reimbursement rates for all nursing facilities participating as providers of intermediate care or skilled nursing care through the medicaid program. Reviewer criteria.

1. The resident classification review form must be completed by a licensed practical nurse or registered nurse who is qualified by experience, has demonstrated competency in nursing, has successfully completed a training program approved by the department, and is certified by the department.
2. If a facility does not employ a sufficient number of registered nurses to provide the required number of reviewers, a substitution of no more than two licensed practical nurses may be made.
3. The department may decertify any certified nurse for incompetency or neglect in completing resident classification review.
4. The maximum number of reviewers a facility may use during each review period is:
 - a. Facilities of one hundred beds or less - two reviewers.
 - b. Facilities of more than one hundred beds - two reviewers plus one additional reviewer for each fifty beds or part thereof by which the facility exceeds one hundred beds.
5. Information may not be used for the review unless it is documented, readily available to the review nurse, and properly includable in the resident's medical record or is in the resident's medical record.
6. The facilitywide reviews must be conducted during the second full week (Sunday through Saturday) of the month scheduled.
7. A reviewer must use the following qualifiers when completing the resident classification review:
 - a. Time period - the time period to be used is the past seven days except when reviewing behaviors. The time period for behaviors is the last fourteen days.
 - b. Frequency - number of times the questioned action occurs.
 - c. Documentation - specific medical record documentation which is required must be in the resident's medical record, or readily available to the review nurse, and properly includable in the resident's medical record.

History: Effective September 1, 1987; amended effective June 1, 1988;
January 1, 1990.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13); ~~42 CFR 447;~~

Subpart 6

TITLE 79
Oilseed Council

JUNE 1990

79-02-01-01. Scope. This article is promulgated pursuant to North Dakota Century Code chapter 4-10.2 and North Dakota Century Code section 28-32-02. This article applies to all sunflowers, safflower, rapeseed or canola, crambe, and flax grown in North Dakota or sold to a designated handler and shall be applied in conjunction with North Dakota Century Code chapter 4-10.2.

History: Amended effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-10.2-01

79-02-01-02. Operations of council. All official functions of the ~~sunflower~~ oilseed council shall be subject to North Dakota Century Code chapter 28-32.

History: Amended effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-10.2-07

79-02-02-01. Definitions. Unless otherwise defined, or made inappropriate by context, all words used in this chapter shall have that meaning given to them under North Dakota Century Code chapter 4-10.2. "Designated handler" includes, for the purposes of the assessment and reporting required by North Dakota Century Code chapter 4-10.2, a grower selling the grower's unharvested sunflowers, safflower, rapeseed or canola, crambe, or flax, or delivering the grower's sunflowers, safflower, rapeseed or canola, crambe, or flax from the farm on which they are produced to any storage facility, packaging shed, or processing plant located outside the state.

History: Amended effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-10.2-02

79-02-02-02. Purpose of sunflower oilseed tax. The purpose of the sunflower oilseed tax is to promote and provide better methods of production, development, processing, and marketing of sunflowers, safflower, rapeseed or canola, crambe, and flax so that persons involved in the sunflower industry these industries and North Dakota are benefited.

History: Amended effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-10.2-01

79-02-02-03. Reports - Form and content. Every designated handler shall, within fifteen days after the end of each calendar quarter, file a quarterly sunflower oilseed promotion report including the remittance of assessment fees for that quarter, with the council in the form and containing the information as prescribed by the council. Calendar quarters shall end on March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year.

History: Amended effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-10.2-08

79-02-02-04. Sunflower Oilseed tax refund. Any grower desiring a refund of the grower's sunflower, safflower, rapeseed or canola, crambe, or flax assessment shall make application by personal letter to the chairman of the sunflower oilseed council. The application or request for refund shall be made within sixty days following the assessment or final settlement. Upon receipt of the grower's personal letter of application or request for refund, the council shall send to the grower a refund application blank which must be returned by the grower within sixty days from the date of mailing the refund application blank.

History: Amended effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-10.2-09

TITLE 92
Workers Compensation Bureau

JUNE 1990

92-01-02-02.1. Temporary partial disability benefits. If, after a compensable injury, a claimant cannot return to full-time employment, or returns to work at a wage less than that earned at the time of the claimant's first or recurrent disability as defined in North Dakota Century Code section 65-05-09, the claimant is eligible for a temporary partial disability benefit. Pursuant to North Dakota Century Code section 65-05-10, the temporary partial disability rate is to be fixed by the bureau.

For claims of temporary partial disability benefits asserted against the fund when the partial loss of earning power occurred prior to July 1, 1989, benefits will be calculated in the following manner:

1. The temporary partial disability rate will be equal to the percentage obtained by dividing the claimant's postinjury wages by the claimant's preinjury wages. Postinjury wages means those wages actually earned after the first or recurrent disability as defined in this section. Preinjury wages means the claimant's wages earned at the time of the first or recurrent disability as defined in this section.
2. The claimant will receive the above calculated percentage of the weekly temporary total disability benefits as determined by North Dakota Century Code section 65-05-09.
3. Dependency allowance as defined in North Dakota Century Code section 65-05-09 will be paid at the same temporary partial disability percentage as calculated in subsection 1.
4. If, after the injury, the claimant earns ninety percent of the claimant's earnings at the time of the first or recurrent disability as defined in this section, no benefits will be paid.

5. A claimant may earn up to ten percent of the claimant's wages earned at the time of the first or recurrent disability with no reduction in temporary total disability benefits; however, all wages earned after the injury, from the employer of injury or any other employer, must be reported to the bureau to determine whether a reduction applies.
6. If the claimant's failure to report wages earned after the injury results in an overpayment of benefits, such overpayment must be refunded to the bureau at a rate set by the bureau, or be deducted from future payable benefits.

History: Effective June 1, 1990.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-02-08

92-01-02-02.2. Additional twenty-five percent rehabilitation allowance benefit payment. Eligibility for the additional twenty-five percent rehabilitation allowance will be determined when either of the following conditions are met:

1. A claimant who maintains a second domicile during such time the claimant is participating in a formalized rehabilitation training program shall be granted an additional twenty-five percent weekly rehabilitation allowance while in training. Maintenance of a second domicile requires the ownership and upkeep of the claimant's primary home, and ownership, lease, or rental of a second residence, while in training.
2. If a claimant elects to commute to and from school on a daily basis rather than maintain a second domicile, the claimant shall be granted an additional twenty-five percent weekly rehabilitation allowance, provided:
 - a. The distance from the claimant's residence to the school or training institution equals or exceeds thirty miles; and
 - b. The training program requires the claimant's regular attendance on a daily (five days per week) basis.

The additional twenty-five percent weekly rehabilitation allowance is to be calculated as a percentage of the claimant's present weekly lost-time benefit rate, including dependency allowance payments.

History: Effective June 1, 1990.
General Authority: NDCC 65-02-08, 65-05.1-06.1
Law Implemented: NDCC 65-05.1-06.1

92-01-02-11. Attorneys. Any party shall have a right to be represented by an attorney at any stage in the proceedings regarding a

claim. Attorney's fees for the claimant only will be paid by the bureau ~~from the time a claim is denied or reduced and~~ at a rate set by the bureau according to North Dakota Century Code section 65-02-08. The bureau may deny attorney's fees upon a finding that a claim ~~or appeal~~ is frivolous. The attorney shall file a notice of legal representation prior to or together with the attorney's first communication with the bureau.

History: Amended effective June 1, 1990.

General Authority: NDCC 65-02-08, ~~65-13-05~~ 65-10-03

Law Implemented: NDCC 65-02-08, 65-10-03, ~~65-13-13~~

92-01-02-11.1. Fees. Fees for legal services provided by claimants' attorneys and legal assistants working under the direction of claimants' attorneys will be paid subject to the following:

1. Attorneys must be paid at the rate of seventy dollars per hour for actual and reasonable time.
2. Legal assistants acting under the supervision of claimants' attorneys must be paid at the rate of forty dollars per hour for actual and reasonable time. A "legal assistant" means any person with a bachelor's degree, in a legal assistant or paralegal program, from an accredited college or university, or a legal assistant certified as such by the national association of legal assistants.
3. Subject only to subsections 5 and 6, total fees paid by the bureau for all legal services in connection with a claim may not exceed the following:
 - a. No fees may be paid prior to constructive denial of a claim, issuance of a pretermination notice informing a claimant that the bureau intends to discontinue or suspend benefits, or issuance of an administrative order, except as otherwise provided by this section.
 - b. The sum of three hundred fifty dollars, plus reasonable costs incurred, for legal services following issuance of a pretermination notice, if an administrative order discontinuing or suspending benefits is not subsequently issued.
 - c. The sum of seven hundred dollars, plus reasonable costs incurred, for legal services in connection with an offer by the bureau to make a lump sum settlement pursuant to North Dakota Century Code section 65-05-25.
 - d. The sum of seven hundred dollars, plus reasonable costs incurred, for legal services in connection with a rehabilitation plan after the bureau has notified the

claimant to identify a rehabilitation plan under North Dakota Century Code section 65-05.1-04.

- e. The total sum of fifteen hundred dollars, plus reasonable costs incurred, following constructive denial of a claim, or issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if the dispute is resolved before an evidentiary hearing or deposition is scheduled by the bureau.
 - f. The total sum of three thousand dollars, plus reasonable costs incurred, if the dispute is resolved after an evidentiary hearing or deposition is scheduled by the bureau or following such hearing or deposition.
 - g. The total sum of five thousand dollars, plus reasonable costs incurred, if the claimant prevails following a district court appeal.
 - h. The total sum of six thousand dollars, plus reasonable costs incurred, if the claimant prevails following an appeal to the North Dakota supreme court.
4. The maximum fees specified in subdivisions e, f, g, and h of subsection 3 include all fees paid by the bureau to one or more attorneys representing the claimant in connection with the same claim at all stages in the proceedings, including those fees paid according to subdivisions b, c, and d of subsection 3. A "claim" includes all matters affecting rights of a claimant in connection with one or more work injuries that are or reasonably could be included in a single administrative order or application for benefits.
5. Upon application of the claimant's attorney and a finding by the bureau that a claim has clear and substantial merit and that the legal or factual issues involved in the dispute are unusually complex, the bureau may approve payment of reasonable fees in excess of the maximum fees provided by subdivisions e and f of subsection 3. If the bureau approves payment of fees in excess of the maximum fees provided by subdivisions e and f of subsection 3, the bureau shall set a new maximum fee, which may not be exceeded. Upon application of the claimant's attorney to the appellate court and a finding by the court that the claim had clear and substantial merit, and that the legal or factual issues involved in the appeal were unusually complex, the court may approve payment of reasonable fees in excess of the maximum fee provided by subdivisions g and h of subsection 3. All applications for additional fees in excess of the maximum fees must contain a concise statement of the reasons for the request, including a summary of the factual or legal issues, or both, justifying such request, and an explanation concerning why the issues are

unusually complex. Factors that must be considered in determining whether the factual or legal issues are unusually complex include:

- a. The extent of the prehearing and posthearing discovery;
 - b. The number of depositions;
 - c. The number of legal or factual issues in dispute; and
 - d. Whether the legal issues or relevant statutes have been previously interpreted by the North Dakota supreme court.
6. If the bureau has awarded benefits, and the employer requests a rehearing, the bureau may, in its discretion, pay the claimant's attorney fees and costs in connection with the rehearing. Total fees paid pursuant to this section may not exceed the sum of fifteen hundred dollars.
7. All time must be recorded in increments of no more than six minutes (one-tenth of an hour). Contemporaneous time records must be kept and made available to the bureau, upon request made at any time within two years of the date recorded.
8. "Minimum" billings in increments greater than six minutes (one-tenth of an hour) are not permitted.
9. Monthly fee statements and a final statement upon resolution of the matter must be submitted to the bureau on forms provided by the bureau for that purpose, or on other forms acceptable to the bureau. All statements must show the name of the claimant, claim number, date of the statement, date of each service or charge, itemization and a reasonable description of each service or charge, time and amount billed for each item, and total time and amounts billed. No fees for services provided more than ninety days before the date of the billing will be paid except for those approved in the sole discretion of the bureau.
10. The following costs will be reimbursed:
- a. Actual postage.
 - b. Actual toll charges for long-distance telephone calls.
 - c. Copying charges, at twenty cents per page.
 - d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel

expenses may be reimbursed only if approval for such travel is given, in advance, by the bureau.

- e. Other reasonable and necessary costs, not to exceed one hundred dollars. Other costs in excess of one hundred dollars may be reimbursed only upon agreement, in advance, by the bureau. Costs for typing and clerical or office services will not be reimbursed.

An attorney who accepts compensation from the bureau for services pursuant to North Dakota Century Code section 65-08-02 and this section agrees to binding fee arbitration of all disputes relating to payment or denial of fees.

Fees for reporters must be: The sum of twenty-five dollars per hour, for appearance at hearing or other proceeding; plus, two dollars and fifty cents per page for transcription and original transcript, and twenty cents per page for additional copies. The bureau shall also reimburse reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

History: Effective June 1, 1990.

General Authority: NDCC 65-02-08, 65-10-03

Law Implemented: NDCC 65-02-08, 65-10-03

92-01-02-13. Transfer of coverage from selling employer to purchasing employer.

1. The compensation coverage of an employer selling or transferring the employer's business to another employer who continues to operate the same business may, at the discretion of the bureau, be transferred to the purchaser. Any premium unearned on the seller's risk must be applied toward payment for the transferred coverage.
2. The compensation coverage of an employer, who has operated a business as an individual owner (sole proprietorship), as a family operation, (sons, spouse, daughters), or as a partnership, selling or transferring the business within three months of the last actual payroll period expiration date to a corporation of which the employer, as an individual owner, family member or partner, continues to be an officer or shareholder, may be transferred to the purchasing corporation. Then the payroll for the three-month (or less) payroll period will be prorated on the basis of the maximum of three hundred dollars per month per employee for the period of time involved. If the salary paid is less than the maximum amount of three hundred dollars, the full amount is reportable, or if an employee ceased employment during the three-month period, the gross paid is to be reported up to three thousand six hundred dollars.

History: Effective June 1, 1990.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-04-01

92-01-02-14. Procedure for penalizing employers accounts for failure to make payroll reports. When an employer fails to make payroll reports, the underwriter shall:

1. Set up an account (including an application listing one employee) for the purpose of assigning a number;
2. Request a payroll report; and
3. If the report is not provided, recommend to the director that a penalty be fixed by order in an amount not to exceed five hundred dollars.

The underwriter is the person appointed by the director to head the department at the bureau which sets rates and collects employers' premiums. The bureau employs one head underwriter and two assistant underwriters.

History: Effective June 1, 1990.
General Authority: NDCC 65-02-08, 65-04-12
Law Implemented: NDCC 65-04-12

92-01-02-15. Altering payroll reporting periods for employers. The bureau, upon an employer's request, may alter an employer's payroll reporting period to conform with regular quarter endings (March thirty-first, June thirtieth, September thirtieth, December thirty-first) in cases where an employer's payroll reporting period would not normally coincide with a quarter's end.

History: Effective June 1, 1990.
General Authority: NDCC 65-02-08, 65-04-05
Law Implemented: NDCC 65-04-05

92-01-02-16. Expiration date change. If a riskholder requests a change of expiration date on the riskholder's account, the following procedure will apply: The payroll will be prorated on a basis of the maximum of three hundred dollars per month per employee for the period of time involved. If the salary paid is less than the maximum amount of three hundred dollars per month, the full amount is reportable.

History: Effective June 1, 1990.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-04-01

92-01-02-17. Reporting payroll for period of noncompliance. If the noncompliance period of a new account is less than twelve months, the following procedure will apply: The payroll will be prorated on a basis of the maximum of three hundred dollars per month per employee for the period of time involved. If the salary paid is less than the amount of three hundred dollars per month, the full amount is reportable. If an employee ceased employment during the noncompliance period, the gross payroll of the employee is prorated over the period of noncompliance up to a maximum of three hundred dollars per month for the period of noncompliance.

History: Effective June 1, 1990.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-04-01

92-01-02-18. Experience rating system. The following system is established for the experience rating of risks of employers contributing to the fund:

1. Basis for experience rating. A merit rating system must be applied at the termination of the twelve-month insurance period for all employers' accounts of the fund meeting the following qualifications:
 - a. The account has completed two consecutive twelve-month insurance periods.
 - b. The employer's account, excluding optional coverage, has developed an annual premium of twenty-five dollars or more on its last actual payroll.

Employer's coverage shall not be eligible for merit rating. No minimum premium shall be eligible for merit rating. When computing merit rating discount, an employer may not pay less than the minimum premium for the highest classification rate of that employer for merit rating purposes. The date claims are accepted must be the controlling factor for the five succeeding years.

2. Basic compensation allowance. The premium allowance is established by adding the total earned premium for each account based on the period within the first five of the six years immediately preceding the twelve-month insurance period times fifty percent of the accumulated earned premium for the stated five-year period, which equals the premium allowance for a stated twelve-month period.
3. Merit rate discount. Percentage of merit rate discount is computed as follows:

- a. The four-year premium and the current year's base premium obtained from the current payroll report are added together.
 - b. Take fifty percent of this total, which is the five-years' premium, and arrive at the allowance.
 - c. If the losses on the experience rating sheet exceed the allowance arrived at in subdivision b, the allowance figure is subtracted from the loss figure.
 - d. This difference is divided by the allowance figure to obtain the percentage of difference.
 - e. The percentage of difference is multiplied by forty percent.
 - f. This figure is the percentage of merit rate charged to be applied on the current estimated portion of the payroll report.
 - g. If the allowance figure exceeds the loss figure on the experience rating sheet, the loss figure is subtracted from the allowance figure.
 - h. This difference is divided by the allowance figure to obtain the percentage of difference.
 - i. This percentage of difference is multiplied by forty percent.
 - j. This figure is the percentage of merit rate discount to be applied on the current estimated portion of the payroll report.
4. Percentage charge or discount. In no instance may the employer's base premium be added to, for charge, or subtracted from, for discount, by more than forty percent. For payroll periods ending July 31, 1989, and after, the percentage or merit rate may not change more than forty percent on an individual account.

History: Effective June 1, 1990.

General Authority: NDCC 65-02-08, 65-04-17

Law Implemented: NDCC 65-04-17

92-01-02-19. Employer relief after third-party recovery. Upon third-party recovery pursuant to North Dakota Century Code section 65-01-09 in claims which have been assumed by the bureau and where the employer's merit rating has been affected, relief will be given to the employer from the date of the actual recovery to the balance of the experience rating period.

"Relief will be given" indicates that the amount of money recovered by the bureau in a third-party action will be deducted from the amount charged against the employer's merit rating. This may result in a decreased premium for that employer in the future.

History: Effective June 1, 1990.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-01-09, 65-04-17

92-01-02-20. Classification of employments - Premium rates. Classifications and premium rates, taking into consideration hazards and risks of different occupations, must be those classifications and premium rates contained in the 1989 edition of that publication entitled, "North Dakota Workers Compensation Bureau Rates and Classifications" which is hereby adopted by reference thereto and incorporated within this section as though set out in full herein.

Premium rates must be adjusted annually as recommended by the bureau's actuaries based upon the criteria set forth in North Dakota Century Code section 65-04-01.

The minimum premium charge for all classifications will be twenty-five dollars per year except for the following volunteer classifications:

Classification No.

<u>7710</u>	<u>Fire department, volunteer - minimum will be fifty dollars</u>
<u>7715</u>	<u>Civil defense volunteer disaster - minimum will be fifty dollars</u>
<u>9830</u>	<u>Civil air patrol, volunteer - minimum will be one hundred ten dollars</u>
<u>9385</u>	<u>Volunteer programs - minimum will be one hundred fifty dollars</u>
<u>9840</u>	<u>Vocational training and work evaluation programs, volunteer - minimum will be one hundred fifty dollars</u>

History: Effective June 1, 1990.
General Authority: NDCC 65-02-08, 65-04-01
Law Implemented: NDCC 65-04-01

92-04-01-01. Definitions. As used in this article:

1. "Alteration" means a structural modification of or a departure from an original or existing construction.

2. "A.S.M.E. Code" means the Boiler Pressure Vessel Construction Code of the American society of mechanical engineers of which sections I, II, IV, VIII (divisions I and II), and IX as of July 1, 1978, are hereby adopted by the bureau and incorporated by reference as a part of this article. A copy of the American Society of Mechanical Engineers Code is on file at the office of the bureau. The American Society of Mechanical Engineers Code may be obtained from the American society of mechanical engineers headquarters at 345 East Forty-seventh Street, New York City, New York 10017.
- 2.1. "Apartments" means all multiple dwellings, which include condominiums.
3. "Approved" means approved by the bureau.
4. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels or from electricity or nuclear energy. The term boiler includes fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves, as per North Dakota Century Code section 65-12-04.
5. "Bureau" means the North Dakota workers compensation bureau.
6. "Certificate of competency" means a certificate issued by a jurisdiction indicating that a person has passed an examination prescribed by the national board of boiler and pressure vessel inspectors.
7. "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to decide whether a certificate, as provided for in North Dakota Century Code section 65-12-06 may be issued.
8. "Chief inspector" means the chief boiler inspector appointed by the bureau to serve in the capacity as stated by law.
9. "Condemned boiler" means a boiler that has been inspected and declared unsafe or disqualified by legal requirements by an inspector qualified to take such action who has applied a stamping or marking designating its rejection.
10. "Deputy inspector" means a boiler inspector or inspectors employed by the bureau to assist the chief inspector in making inspections of boilers.
11. "Existing installations" includes any boiler constructed, installed, or placed in operation before July 1, 1973.

12. "External inspection" means an inspection made when a boiler is in operation.
13. "Fusion welding" means a process of welding metals in a molten or molten and vaporous state, without the application of mechanical pressure or blows. Such welding may be accomplished by the oxyacetylene or oxyhydrogen flame or by the electric arc. Thermit welding is also classed as fusion.
14. "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] or temperatures exceeding two hundred fifty degrees Fahrenheit [121.16 degrees Celsius]. For practical purposes it shall be deemed the same as a power boiler.
15. "Hot water supply boiler" means a fired boiler used exclusively to supply hot water for purposes other than space heating and shall include all service and domestic type water heaters not otherwise exempt by North Dakota Century Code section 65-12-04.1.
16. "Inspector" means the chief boiler inspector or any deputy inspector or special inspector.
17. "Internal inspection" means an inspection made when a boiler is shutdown and handholes or manholes are opened for inspection of the interior.
18. "Low pressure and heating boiler" means a boiler operated at pressures not exceeding fifteen pounds per square inch gauge [1.03 kilopascals] for steam or at pressures not exceeding one hundred sixty pounds per square inch gauge [1103.17 kilopascals] and temperatures not exceeding two hundred fifty degrees Fahrenheit [121.1 degrees Celsius], for water.
19. "Major repair" shall be considered as a repair upon which the strength of a boiler would depend. Major repairs are those that are not of a routine nature as described in Chapter III of the National Board Inspection Code. Chapter III of the National Board Inspection Code, 1987 edition, is hereby adopted by the bureau and incorporated by reference as a part of this article.
20. "Miniature boiler" means any boiler which does not exceed any of the following limits:
 - a. Sixteen-inch [40.64-centimeter] inside diameter of shell.
 - b. Twenty square feet [1.86 square meter] heating surface.
 - c. Five cubic feet [.142 cubic meter] gross volume, exclusive of casing and insulation.

- d. One hundred per square inch gauge [689.48 kilopascals] maximum allowable working pressure.
21. "National board" means the national board of boiler and pressure vessel inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the American Society of Mechanical Engineers Code.
 22. "National Board Inspection Code" means the manual for boiler and pressure vessel inspectors supplied by the national board. Copies of this code may be obtained from the national board at 1055 Crupper Avenue, Columbus, Ohio 43229.
 23. "New boiler installations" includes all boilers constructed, installed, or placed in operation after July 1, 1973.
 24. "Nonstandard boiler" means a boiler that does not bear the state stamp, the national board stamp, the American society of mechanical engineers stamp or the stamp of any state or political subdivision which has adopted a standard of construction equivalent to that required by this article.
 25. "Owner or user" means any person, firm, corporation, state, or political subdivision owning or operating any boiler which is not specifically exempt under North Dakota Century Code section 65-12-04.1 within North Dakota.
 26. "Power boiler" means a closed vessel in which steam or other vapor (to be used externally to itself) is generated at a pressure of more than fifteen pounds per square inch gauge [1.03 kilopascals] by the direct application of heat.
 27. "Reciprocal commission" means a commission issued by the bureau to persons who have passed a written examination prescribed by the national board and who hold a national board commission issued by the national board, or to persons who have passed the written examination prescribed by the national board and are employed by a self-insured corporation making their own inspections.
 28. "Reinstalled boiler" means a boiler removed from its original setting and reerected at the same location or erected at a new location without change of ownership.
 29. "Repair" is a restoration of any damaged or impaired part to an effective and safe condition.
 30. "Secondhand boiler" means a boiler of which both the location and ownership have been changed after primary use.

31. "Service or domestic type water heater" means a fired water heater of either instantaneous or storage type, used for heating or combined heating and storage of hot water to be used for domestic or sanitary purposes, with temperatures not exceeding two hundred fifty degrees Fahrenheit [121.1 degrees Celsius], and a heat input not in excess of two hundred thousand British thermal units [2.11×10 to the 8th power joules] per hour, and pressure not to exceed one hundred sixty pounds per square inch [1103.17 kilopascals].
32. "Special inspector" means an inspector regularly employed by an insurance company authorized to insure against loss from explosion of boilers in this state or an inspector who has passed the national board examination and is employed by self-insured corporations.
33. "Standard boiler" means a boiler which bears the stamp of North Dakota or of another state which has adopted a standard of construction equivalent to that required by this article or a boiler which bears the national board stamp or American society of mechanical engineers stamp.
34. "State of North Dakota Boiler Construction Code" is used to designate the accepted reference for construction, installation, operation, and inspection of boilers and will be referred to as this article. Anything not amended or specifically covered in this article shall be considered the same as the American Society of Mechanical Engineers Code, as of July 1, 1978.
35. "Steam traction engines" means boilers on wheels which are used solely for show at state fairs and other exhibitions in which the public is invited to attend.

History: Amended effective October 1, 1980; August 1, 1987; June 1, 1990.

General Authority: NDCC 65-12-08

Law Implemented: NDCC 65-12-08

92-04-02-17. Reporting repairs to be made.

1. The owner or person in charge of a ~~boiler or~~ boiler repair shop making major repairs to a boiler shall notify the chief boiler inspector of each major repair or alteration to be made thereto, and the anticipated repair shall be approved before work is started; or
2. If the boiler is insured or owned by a self-insured corporation, the special inspector may authorize the repair. After such repairs are made, they shall be subject to the approval of an inspector.

History: Amended effective June 1, 1990.
General Authority: NDCC 65-12-08
Law Implemented: NDCC 65-12-08

92-04-02-18. Reports of welded repair or alterations. All major repairs made to boilers in North Dakota must be reported on the report of welded repair or alteration Form WC 2033 or national board Form R-1 and ~~this~~ either form must be filled out completely. The completed form must be sent by the repair concern effecting the repair to the chief boiler inspector within thirty days of the completion of the repair or alteration. It must be signed by the inspector approving the repair or by the manufacturer or boiler repair concern effecting the repairs.

Subject to the administrative procedures of the bureau and the approval of the inspector, repairs of a routine nature may be given prior approval or the requirement for the repair report may be waived. The National Board Inspection Code must be used as a guideline in determining repairs of a routine nature.

History: Amended effective June 1, 1990.
General Authority: NDCC 65-12-08
Law Implemented: NDCC 65-12-08

92-04-03-01.1. Boiler inspection fees. The following will be charged for boiler inspections:

1. High pressure boilers.

<u>a. Internal inspections.</u>	<u>Fee</u>
<u>50 square feet or less of heating surface</u>	<u>\$25.00</u>
<u>Over 50 square feet and not over 500 square feet</u>	<u>35.00</u>
<u>Over 500 square feet and not over 4,000 square feet</u>	<u>45.00</u>
<u>Over 4,000 square feet of heating surface</u>	<u>55.00</u>

b. External inspections.

<u>50 square feet of heating surface or less;</u> <u>100 KW or less</u>	<u>\$20.00</u>
<u>Over 50 square feet of heating surface, over</u> <u>100 KW</u>	<u>25.00</u>

2. Low pressure boilers.

a. Internal inspections.

<u>Without manway</u>	<u>\$25.00</u>
<u>With manway</u>	<u>35.00</u>

b. External inspections.

Hot water heat and low pressure steam	\$20.00
Hot water supply	<u>10.00</u>
Additional boilers at same account for same day inspection. (Account = same owner, management firm, user, etc.)	<u>15.00</u>

3. "Show" boilers.

Internal	\$35.00
External	<u>30.00</u>
Hydrostatic test	<u>40.00</u>
Ultrasonic survey	<u>40.00</u>

4. The charge cannot exceed one hundred eighty-five dollars per day plus expenses for inspections of boilers for the same account, per inspector.

History: Effective June 1, 1990.
 General Authority: NDCC 65-02-08, 65-12-11
 Law Implemented: NDCC 65-12-11

92-04-03-08. Safety appliances.

1. No person shall remove, tamper with, or render inoperative any safety appliances prescribed by these rules except for the purpose of making repairs. The resetting of safety appliances shall not exceed the accepted working pressure of the unit.
2. Repairs or adjustments made to safety or safety relief valves must be done by the manufacturer of the valve or an approved testing facility equipped to do same. The resetting of safety valves or safety relief valves shall not exceed the accepted working pressure for the unit.
3. An approved testing facility must be one of the following:
 - a. A facility holding a valid certificate of authorization and "VR" symbol stamp issued by the national board of boiler and pressure vessel inspectors.
 - b. An electrical generating station owner or user "VR" program, the full equivalent of the national board "VR" program, reviewed and accepted by the chief boiler inspector and a representative of the owner or user's authorized inspection agency responsible for the inservice inspection of the owner or user's boilers.
 - c. An owner or user program for doing adjustments to set pressure or blowdown, or both, to boiler pressure relief valves owned by them, provided the adjusted settings or capacities, or both, and the date of the adjustments are recorded on a metal tag secured to the seal wire. All

external adjustments must be sealed showing the identification of the organization making the adjustments. The chief boiler inspector shall review the training, qualifications, and procedures used to implement this program.

History: Amended effective June 1, 1990.
General Authority: NDCC 65-12-08
Law Implemented: NDCC 65-12-08

92-04-05-22. Pressure on nonstandard traction engines. All steam traction engines which are of nonstandard boiler construction shall be limited to a maximum allowable working pressure of one hundred twenty-five pounds per square inch ~~{861.84 kilopascals}~~, unless a thorough ultrasonic thickness survey, engineering analysis, and other inspections, approved by the chief boiler inspector, determine that a different pressure is appropriate. In no case may the maximum allowable working pressure be greater than that permitted by the original manufacturer. Boilers herein described shall not be subject to the age limits of section 92-04-05-03.

History: Amended effective June 1, 1990.
General Authority: NDCC 65-12-08
Law Implemented: NDCC 65-12-08

TITLE 94

Corrections and Rehabilitation, Department of

JUNE 1990

STAFF COMMENT: Title 94 contains all new material but is not underscored so as to improve readability.

ARTICLE 94-01

GENERAL ORGANIZATION

Chapter
94-01-01 Organization of Department [Reserved]

CHAPTER 94-01-01
ORGANIZATION OF DEPARTMENT

[Reserved]

ARTICLE 94-02

JAILS

Chapter
94-02-01 Required Facilities
94-02-02 Detention of Juveniles and Juvenile
 Detention Centers
94-02-03 Facility Classification, Construction,
 and Renovation
94-02-04 Admissions Procedures
94-02-05 Supervision and Security

94-02-06 Inmate Health Care
 94-02-07 Safety, Sanitation, and Hygiene
 94-02-08 Food Service
 94-02-09 Telephone Calls and Visitation
 94-02-10 Mail
 94-02-11 Reading and Legal Materials
 94-02-12 Prisoner Exercise and Recreation
 94-02-13 Exercise of Religious Practices
 94-02-14 Grievance Procedure
 94-02-15 Cell Care - Jail Property - Prisoner
 Responsibility
 94-02-16 Prohibited Acts and Disciplinary
 Procedure
 94-02-17 Correctional Officer Training
 94-02-18 Inspections
 94-02-19 Application Procedure for Jail
 Classification and Inmate Categories

**CHAPTER 94-02-01
 REQUIRED FACILITIES**

Section

94-02-01-01 Cell Size
 94-02-01-02 Dayroom
 94-02-01-03 Exercise Room
 94-02-01-04 Outdoor Recreation Area
 94-02-01-05 Educational and Counseling Program Space
 94-02-01-06 Visitation Area
 94-02-01-07 Intake/Booking Area
 94-02-01-08 Food Preparation Space
 94-02-01-09 Heating and Ventilation Systems
 94-02-01-10 Sanitary Facilities
 94-02-01-11 Firefighting and Fire Detection Equipment
 94-02-01-12 Recognized Standards

94-02-01-01. Cell size. Every effort must be made to house each inmate in a single cell. Each inmate must be provided an adequate amount of cell space. Minimum cell size for shared cells in existing jails must, at a minimum, meet the requirements as set out in Campbell v. Cauthron, 623 F.2d 503, 507-8 (8th Cir. 1980).

History: Effective June 1, 1990.
 General Authority: NDCC 12-44.1-24
 Law Implemented: NDCC 12-44.1-14

94-02-01-02. Dayroom. All groups of inmates in grade one and grade two jails, as set out in North Dakota Century Code section 12-44.1-09, and juvenile detention centers authorized to detain juveniles for more than ninety-six hours shall have equal access to a

dayroom. If more than one group of inmates will have access to the same dayroom, then the dayroom must be separated from inmate cells or dormitories.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-01-03. Exercise room. All groups of inmates in grade one and grade two jails, as set out in North Dakota Century Code section 12-44.1-09, and juvenile detention centers authorized to detain juveniles for more than ninety-six hours shall have equal access to an exercise room. The exercise room in a grade one jail must be separate from the dayroom. Inmate physical exercise in a grade two jail or juvenile detention center may be provided in a separate exercise room or in the dayroom. If more than one group of inmates will have access to the same exercise room, then the exercise room must be separated from inmate cells or dormitories.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-01-04. Outdoor recreation area. Grade one jails must have an adequate sized secure outdoor recreation area equally available to all classifications of inmates.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-01-05. Educational and counseling program space. Grade one and grade two jails and juvenile detention centers authorized to detain juveniles for more than ninety-six hours must provide adequate and secure space for conducting educational and counseling programs for inmates which must be equally available to all classifications of inmates.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-17

94-02-01-06. Visitation area. Each jail must have an adequate sized secure visitation room. Grade one jails must also have a separate adequate sized secure contact visitation area.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-01-07. Intake/booking area. Each jail must have a separate and secure intake/booking area.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-01-08. Food preparation space. When food is prepared in the jail, adequate space for food preparation must be provided.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-01-09. Heating and ventilation systems. Each jail must have heating and ventilation systems sufficient to maintain humane comfort.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-01-10. Sanitary facilities. Toilets, showers, washbasins, and hot and cold running water must be accessible to all inmates.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-01-11. Firefighting and fire detection equipment. Commercial-type firefighting and fire detection equipment, approved by the state fire marshal must be provided in accessible locations within the jail and must be regularly tested to assure operational condition.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-03

94-02-01-12. Recognized standards. The governing bodies of existing jails are encouraged to make every effort to substantially comply with model correctional facility standards such as those published by the American correctional association.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

CHAPTER 94-02-02
DETENTION OF JUVENILES AND JUVENILE DETENTION CENTERS

Section	
94-02-02-01	Juvenile Detention Centers
94-02-02-02	Liberal Construction
94-02-02-03	Security Versus Jail Appearance
94-02-02-04	Coeducational Programs
94-02-02-05	School Study Assistance
94-02-02-06	Administration
94-02-02-07	Security
94-02-02-08	Sleeping Rooms
94-02-02-09	Other Standards

94-02-02-01. Juvenile detention centers. Juvenile detention centers shall meet, at a minimum, the regulations contained herein. The director of the department of corrections and rehabilitation shall determine, for each juvenile detention facility in this state, whether county, city, or privately administered, the maximum number of hours or days that juveniles may be detained. In addition, the director of the department of corrections and rehabilitation may impose other conditions to the authorization for such facility, including, but not limited to, conditions pertaining to the operation, administration, and physical plant requirements of such facility.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-06, 12-44.1-24

94-02-02-02. Liberal construction. The rules contained in this article must be construed liberally when applied to juveniles.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-02-03. Security versus jail appearance. Juvenile detention centers must be secure but every effort must be made to minimize the appearance of a jail.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-17

94-02-02-04. Coeducational programs. Coeducational programs and activities may be utilized in juvenile detention centers if adequate supervision may be maintained.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-17

94-02-02-05. School study assistance. A juvenile detained for more than ninety-six hours must be given reasonable assistance in obtaining educational materials and assignments necessary to keep the juvenile current in regular school studies.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-17

94-02-02-06. Administration. All juvenile detention centers must have an administrator appointed by the governing authority and a budget separate from adult corrections, detention, or jail facility.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-04(3)

94-02-02-07. Security. The facility must be secured in such a way that juveniles remain within the security perimeter and that access by the general public is denied without proper authorization. Sight and sound separation must be maintained between juvenile detainees and all persons not authorized to be present within the juvenile detention facility.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-13

94-02-02-08. Sleeping rooms. All sleeping rooms in detention facilities must have, at a minimum, access to all the following sanitation facilities:

1. Toilet above floor level which is available for use without staff assistance twenty-four hours a day.
2. Washbasin and drinking water.
3. Hot and cold running water.
4. A bed above floor level and storage space.
5. Natural light.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-14

94-02-02-09. Other standards. Juvenile detention facility governing authorities and administrators are also required to follow all jail rules of article 94-02 except such rules as may by their provisions be specifically excluded from application to a juvenile detention center, to a juvenile detention center of a limited detention period authorization, or to a juvenile detention center which has been granted a variance pursuant to North Dakota Century Code section 12-44.1-26.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

CHAPTER 94-02-03 FACILITY CLASSIFICATION, CONSTRUCTION, AND RENOVATION

Section	
94-02-03-01	Construction or Renovation Plan Approval
94-02-03-02	Plan Conformance to Applicable Model Standards
94-02-03-03	Grade Classification

94-02-03-01. Construction or renovation plan approval. Plans for the construction of a new facility or plans for the major renovation (estimated expenditure of more than ten thousand dollars) of an existing facility require approval from the office of the director of the department of corrections and rehabilitation prior to commencement of the project.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-03-02. Plan conformance to applicable model standards. Plans for the construction or major renovation of jails and juvenile detention centers must be substantially in accordance with model correctional facility standards such as those published by the American correctional association.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-03-03. Grade classification. The director of the department of corrections and rehabilitation shall determine the grade classification of each facility and shall determine how many groups of

inmates or detainees, as set out in North Dakota Century Code section 12-44.1-09, may be housed in the facility.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-06

CHAPTER 94-02-04 ADMISSIONS PROCEDURES

Section

94-02-04-01	Health Screening Data
94-02-04-02	Health Examination and Treatment
94-02-04-03	Communicable Disease Treatment
94-02-04-04	Mental Illness - Supervision
94-02-04-05	Individual File
94-02-04-06	Clothing
94-02-04-07	Communications Allowed
94-02-04-08	Inmate Instructions

94-02-04-01. Health screening data. Prior to admission or as soon thereafter as is reasonably possible, a correctional officer who is trained in American red cross basic first aid shall obtain receiving health screening data as required by the health care administrator.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-04-02. Health examination and treatment. Prior to admission the inmate must be examined by a correctional officer for body vermin, cuts, bruises, other injuries, infectious diseases, and other visible health problems. These findings must be recorded and any health problems must be appropriately treated.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-04-03. Communicable disease treatment. Inmates known to have or suspected of having hepatitis, venereal disease, or other communicable diseases must be isolated from the remainder of the inmate population and suitable treatment must be obtained as soon as reasonably possible.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-04-04. Mental illness - Supervision. Inmates known to be mentally ill or persons who are held under the emergency provisions of the commitment law must be placed under close supervision.

History: Effective June 1, 1990.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-09, 12-44.1-13

94-02-04-05. Individual file. An individual file on each inmate should be established at intake. The following minimum identification data and information should be recorded for each person detained in the facility:

1. Name (and aliases if any).
2. Address.
3. Date of birth.
4. Sex.
5. Name, address, and phone number of person to be contacted in the event of emergency (parent or guardian if juvenile).
6. Time and date of admission to jail.
7. Authority for admission.
8. Offense.
9. Name of delivering officer and arresting officer.
10. Apparent physical and emotional condition.
11. Space for remarks.
12. Date of release or transfer.
13. Name of person recording the data.

History: Effective June 1, 1990.

General Authority: NDCC 12-44.1-04, 12-44.1-24

Law Implemented: NDCC 12-44.1-22

94-02-04-06. Clothing. Jail clothing must be issued immediately upon admission, unless the correctional officer, in the officer's discretion, determines that the inmate shall be permitted to wear the inmate's own clothing. Possession of shoelaces, belts, scarves, ties, hard shoes or boots, keys, heavy chains, and large rings must be restricted where they could be a security problem or used to inflict

bodily harm. Personal property taken from the inmate must be listed on a personal receipt form made out in the name of the inmate.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-12, 12-44.1-14

94-02-04-07. Communications allowed. Inmates must be allowed to contact an attorney, a family member, friend, next of kin, or bondsman upon completion of the admission's process. A sufficient number of attempts should be allowed to assure completion of a telephone call. Juvenile inmates must be allowed to complete at least two telephone calls.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-04-08. Inmate instructions. Upon admission, or as soon thereafter as is practicable, an inmate must be informed of visitation hours, mail procedures, what constitutes contraband, prohibited acts, disciplinary procedures, grievance procedures, health care procedures, and inmate cell care responsibility.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

CHAPTER 94-02-05 SUPERVISION AND SECURITY

Section

94-02-05-01	Supervision by Correctional Officer
94-02-05-02	Inmate's Right to Privacy
94-02-05-03	Personal Observation of Inmates
94-02-05-04	Written Jail Policy

94-02-05-01. Supervision by correctional officer. No person may be detained without a correctional officer on duty capable of responding to the reasonable needs of the inmate. No inmate may be placed in a supervisory capacity over other inmates.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-13

94-02-05-02. Inmate's right to privacy. Correctional officers may not be placed in positions of responsibility for the supervision of inmates of the opposite sex in circumstances that can be described as an invasion of privacy.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-05-03. Personal observation of inmates. Each inmate must be personally observed by a correctional officer at least every sixty minutes on an irregular basis. Inmates who exhibit suicidal tendencies, who manifest emotional distress, or who have specialized medical problems such as severe intoxication must be personally observed by a correctional officer at more frequent intervals as their condition requires. Juvenile inmates must be observed by a correctional officer every thirty minutes on an irregular basis.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-13

94-02-05-04. Written jail policy. Written jail policy must cover, at a minimum, the following areas:

1. Control and recovery of contraband.
2. Visitor and visitation control.
3. Delivery of goods and supplies.
4. Equipment maintenance.
5. Prohibition of firearms in security perimeter.
6. Search procedures.
7. Escort of prisoners outside security areas.
8. Escape prevention and action plans.
9. Tool, medication, key, and weapon control procedures.
10. Prisoner count procedure.
11. Classification of prisoners.
12. Lockup and disciplinary procedures.
13. Riot prevention and control procedures.

14. Fire evacuation procedures.
15. Inmate's daily schedule which must include mealtimes, exercise, recreation, showers, visitation, telephone calls, sick call, and lights out.

History: Effective June 1, 1990.

General Authority: NDCC 12-44.1-04, 12-44.1-24

Law Implemented: NDCC 12-44.1-09, 12-44.1-14, 12-44.1-15, 12-44.1-19, 12-44.1-20, 12-44.1-21

CHAPTER 94-02-06 INMATE HEALTH CARE

Section

94-02-06-01	Health Care Administration
94-02-06-02	Medical Care Access
94-02-06-03	Medical Staff Availability
94-02-06-04	Medical Emergency Provision
94-02-06-05	Special Medical Care
94-02-06-06	First-Aid Kits
94-02-06-07	Medical Records - Access
94-02-06-08	Inactive Medical Records - Retention
94-02-06-09	Health Appraisal Access
94-02-06-10	Administration of Medical Treatment
94-02-06-11	Notification of Illness or Death
94-02-06-12	Detoxification Procedures
94-02-06-13	Sick Call Procedures
94-02-06-14	Medication
94-02-06-15	Law Governing Practice of Medicine and Nursing
94-02-06-16	Inmate Health Complaints
94-02-06-17	Qualified Officer to be on Duty

94-02-06-01. Health care administration. The jail administrator shall designate a licensed physician or registered nurse or county or state health authority which must be responsible for health care administration and development of policies or procedures.

History: Effective June 1, 1990.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-14

94-02-06-02. Medical care access. Inmates must have access to necessary emergency medical care, including, but not limited to, physical, psychiatric, and dental care. The cost of such medical care is subject to reimbursement from the inmate. Adequate staff, space, equipment, supplies, and materials must be provided if health care is delivered in the jail. Nonemergency physical, psychiatric, and dental

care must be provided to an inmate as directed by the health care administrator.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-03. Medical staff availability. A licensed physician or registered nurse must be available on call on a twenty-four-hour basis. Provisions made to notify a licensed physician or registered nurse on duty at a hospital may be sufficient. Jails in communities without a licensed physician or nurse must have arrangements made to provide health care to an inmate on the same basis as any resident of the community. That is, the inmate must be transported to an appropriate health care facility or a licensed physician or nurse must be brought to the jail.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-04. Medical emergency provision. The jail administrator shall adopt a written plan which provides for transportation to a medical facility in the event of a medical emergency. Emergency telephone numbers must be readily available to correctional officers.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-05. Special medical care. Inmates with acute psychiatric or other illnesses who require necessary health care beyond the resources available in the jail must be transferred or committed to a facility where the necessary health care is available. The jail administrator shall ensure that security will be maintained.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-06. First-aid kits. First-aid kits must be available in the jail. The health care administrator shall approve the contents, locations, and procedure for the inspection of the kits.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-07. Medical records - Access. Access to medical records must be controlled by the health care administrator. The medical records file must be separate from the jail confinement records. Requests by the inmate, the inmate's personal representative, or lawyer for medical attention and the disposition of such requests must be in writing and copies placed in the inmate's personal medical file. Other licensed physicians or registered nurses may be provided access to the information contained in the inmate's confinement record or personal medical file when written authorization by the inmate is obtained. When an inmate is transferred to another jail, summaries or copies of the inmate's health records must be sent to the health care administrator of that jail.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-08. Inactive medical records - Retention. Inactive personal medical records must be retained as permanent records for a period of ten years unless otherwise provided by law.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-09. Health appraisal access. An inmate detained in a grade one or grade two jail must be given a health appraisal by a licensed physician or registered nurse, or such other qualified person as authorized by the health care administrator, within fourteen days of admission, the nature and extent of which must be determined by the health care administrator. The health care administrator may require a health appraisal at an earlier date if the health care administrator, in the administrator's discretion, determines that it is necessary. The health appraisal must include, at a minimum:

1. Review of health screening.
2. Collection of additional data to complete the medical, dental, psychiatric, and immunization histories.
3. Recording of height, weight, pulse, blood pressure, and temperature.
4. Laboratory or diagnostic tests and examinations as deemed appropriate by the health care administrator.
5. Review of medical examination results.

This rule does not require the inmate to participate in laboratory or diagnostic tests absent the existence of consent of the inmate, an emergency, or an order of a court of competent jurisdiction. Refusal of

an inmate to participate in the health appraisal, in whole or in part, must be documented and placed in the inmate's medical records. Should the health care administrator determine that the inmate's refusal presents a risk to the health or safety of other inmates or staff, the inmate may be administratively segregated from the inmate population

until such time as the health care administrator determines that the risk no longer exists.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-10. Administration of medical treatment. The jail administrator is responsible for identifying the mechanism necessary to carry out the specific orders of the health care administrator relating to the inmate's medical care. All treatment administered by correctional officers pursuant to specific orders must be documented.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-11. Notification of illness or death. The jail administrator shall make a good faith attempt to notify the next of kin or legal guardian of an inmate in case of serious illness, injury, or death. The county coroner must be notified in the event of an inmate's death.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-06-12. Detoxification procedures. The health care administrator shall establish the procedures for detoxification when performed in the jail. When detoxification is not performed in the jail, it is to be conducted in a hospital or community detoxification center.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-13. Sick call procedures. Sick call must be provided in grade one and grade two jails and juvenile detention centers at least once a week. The health care administrator shall establish sick call procedures.

History: Effective June 1, 1990.

General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-14. Medication. No person other than a licensed physician may prescribe medication. A licensed physician must be responsible for matters of medical judgment.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-15. Law governing practice of medicine and nursing. The practice of medicine and nursing must be governed by North Dakota law and the accepted practice of the medical and nursing community.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-16. Inmate health complaints. Inmate health complaints must be received and documented daily and the health care administrator must be notified of the complaints. An inmate with a health complaint must be placed on the next sick call list.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-06-17. Qualified officer to be on duty. At least one correctional officer must be on duty at all times who has received American red cross basic first-aid training and basic cardiopulmonary resuscitation training.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

CHAPTER 94-02-07 SAFETY, SANITATION, AND HYGIENE

Section	
94-02-07-01	Bedding and Clothing
94-02-07-02	Bedding Required
94-02-07-03	Mattress Requirement
94-02-07-04	Personal Hygiene Availability
94-02-07-05	Hair Length
94-02-07-06	Safety Code Compliance

94-02-07-01. Bedding and clothing. Bedding and inmate clothing must be kept clean and laundered at least weekly. Pillows, blankets, and mattresses must be sanitized as often as jail usage and the promotion of inmate health require. Delousing materials and procedures must be approved by the health care administrator.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-07-02. Bedding required. Inmates must be provided with a bed, mattress, pillow, and clean sheets, blanket, and pillowcase. Special circumstances may require inmate clothing or bedding be removed from an inmate's cell. Such action must be documented.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-07-03. Mattress requirement. All mattresses must be of a nontoxic fire-retardant material approved by the state fire marshal.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-03

94-02-07-04. Personal hygiene availability. Inmates detained for more than twenty-four hours must be provided personal hygiene items such as soap, towels, toothbrush, and toothpaste and access to a shower at designated intervals to be determined by the jail administrator.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-07-05. Hair length. The jail administrator may restrict an inmate's hair length when necessary for identification, health, or safety purposes. However, an inmate's hair length may not be restricted if it would violate a religious practice.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-07-06. Safety code compliance. The jail administrator shall ensure compliance with the most current edition of the Life Safety Code of the national fire protection association and the Portable Fire Extinguishers Code of the national fire protection association, incorporated.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-03

94-02-07-07. Evacuation and emergency service plans. The jail administrator shall provide written procedure specifying an entire evacuation plan in case of fire or other emergency which must include an accounting system to enable officers to readily determine the number of people inside the jail, the method for prompt evacuation of all inmates, and a plan for mass emergency medical services.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-04, 12-44.1-24
Law Implemented: NDCC 12-44.1-03

CHAPTER 94-02-08 FOOD SERVICE

Section	
94-02-08-01	Dietary Allowance Requirement
94-02-08-02	Special Diet Requirements
94-02-08-03	Mealtimes
94-02-08-04	Food Service Facilities
94-02-08-05	Food Service Area Inspection
94-02-08-06	Meal Service

94-02-08-01. Dietary allowance requirement. All meals must meet or exceed the dietary allowance as stated in the recommended dietary allowances, national academy of sciences. The jail administrator shall document what was served at each meal.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-08-02. Special diet requirements. The jail administrator shall provide for, at a minimum:

1. Special diets as approved by the health care administrator.
2. Prohibitions of the use of food as a reward or disciplinary measure.

3. Special diets as required for adherence to religious beliefs.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-08-03. Mealtimes. Three meals, at least one of which must be a hot meal in grade one and grade two jails and juvenile detention centers, must be provided at regular mealtimes during each twenty-four-hour period with no more than fourteen hours between the evening meal and breakfast.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-08-04. Food service facilities. Food service facilities, equipment, and employees must meet all applicable health, safety, and sanitation laws and regulations. The jail administrator shall make a written request to the agency that inspects local restaurants to inspect the jail food service every three months. This inspection report must be on file in the jail administrator's office.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-03

94-02-08-05. Food service area inspection. The jail administrator or the health care administrator shall make a daily inspection of all food service areas to ensure sanitary conditions.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-08-06. Meal service. Inmates in a grade one facility and juvenile detention centers authorized to detain juveniles for more than ninety-six hours must be served their meals in a dayroom or a dining hall. An inmate may be required to have the inmate's meals served in the inmate's living space area if the jail administrator has reasonable grounds to believe that the inmate presents a threat to jail security, order, or rehabilitation. Inmates in a grade two or grade three jail or a juvenile detention center authorized to detain juveniles for no more than ninety-six hours may have their meals served in their living space.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

CHAPTER 94-02-09
TELEPHONE CALLS AND VISITATION

Section	
94-02-09-01	Telephone Calls - Lawyer, Doctor, or Clergyman
94-02-09-02	Telephone Calls - Friends or Relatives
94-02-09-03	Visitation Privileges
94-02-09-04	Restrictions on Visitation Privileges
94-02-09-05	Visiting Hours
94-02-09-06	Visitors Subject to Search
94-02-09-07	Contact Visitation

94-02-09-01. Telephone calls - Lawyer, doctor, or clergyman. An inmate must be allowed to make telephone calls to the inmate's lawyer, doctor, or clergyman at reasonable times. These calls may not be monitored. The telephone number of a lawyer, doctor, or clergyman who has called an inmate must be obtained and the inmate must be permitted to return the call at a reasonable time.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-09-02. Telephone calls - Friends or relatives. An inmate must be allowed to send or receive telephone calls from persons other than the inmate's lawyer, doctor, or clergyman within limitations set by the jail administrator. Long distance calls must be made collect. These calls may be monitored if the jail administrator has reasonable grounds to believe that the conversation will result in a threat to jail security, order, or rehabilitation. These reasonable grounds must be documented.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-09-03. Visitation privileges. Each inmate must be allowed visits from clergy, legal counsel, probation officers, legal custodian, inmate's immediate family, and those individuals approved by the jail administrator. Juveniles who are not members of the inmate's immediate family may be prohibited from visiting inmates. Upon an inmate's request, legal counsel must be permitted to visit an inmate after

admission as soon as reasonably possible. All subsequent visits by legal counsel may be restricted to reasonable hours.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-09-04. Restrictions on visitation privileges. Restrictions may be placed on who may visit an inmate whenever the jail administrator has reasonable grounds to believe the visitor presents a threat to jail security, order, or rehabilitation and those reasonable grounds are documented. Individuals who have previously been detained in the jail may be prohibited from visiting inmates who were detained with them.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-09-05. Visiting hours. Visiting hours must be reasonably convenient but within such limitations as established by the jail administrator. Visiting hours must be posted in a conspicuous place. Clergy, legal counsel, and probation officers must be allowed to visit with an inmate in private at reasonable times other than regular visiting hours.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

94-02-09-06. Visitors subject to search. Visitors entering the jail may be required to submit to a search of their person and belongings before entering the visitation area if the jail administrator so directs. Anything brought in by visitors for inmates may be inspected for contraband.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14, 12-44.1-15

94-02-09-07. Contact visitation. Contact visitation between an inmate and clergy, legal counsel, and probation officers is mandatory. Contact visitation between an inmate in a grade one jail and family members is encouraged. If contact visitation with family members is provided, then all inmates must be treated equally and have the same

opportunity to have contact visitation unless reasonable grounds exist to deny contact visitation and such reasonable grounds are documented.

History: Effective June 1, 1990.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-14

CHAPTER 94-02-10 MAIL

Section

94-02-10-01 Mail as Privileged Correspondence

94-02-10-02 Mail as General Correspondence

94-02-10-01. Mail as privileged correspondence. Privileged correspondence is mail between an inmate and any one of the following: attorneys; judges and clerks of federal, state, and local courts; president, vice president, and attorney general of the United States; any member of the Congress of the United States; the governor, lieutenant governor, and attorney general of any state; any member of the state legislative assembly; and any parole board member.

1. **Outgoing mail.** Outgoing privileged correspondence may not be opened, inspected, or censored. Outgoing privileged correspondence initiated by an indigent inmate and which contains legal documents must be mailed without charge to the inmate. This extends only to first-class postage for legal mail and does not include registered, certified, or insured mail. Indigent inmates must also be provided free envelopes and writing materials for the mailing and drafting of legal documents. Indigent inmates must be provided a reasonable amount of stamps, envelopes, and writing materials for other privileged correspondence.
2. **Incoming mail.** Incoming privileged correspondence must be treated as privileged only if the name and official status of the sender appears on the envelope. All incoming privileged correspondence may be opened and examined for cash, checks, money orders, or contraband, but only in the presence of the inmate to whom the communication is addressed. In cases where cash, checks, or money orders are found, they must be removed and credited to the inmate's account. Where contraband is found, it must be removed and returned to the sender or retained with the inmate's personal property. The jail administrator of each jail shall determine what constitutes contraband. In no case may the privileged correspondence be read or censored.

3. Packages. Incoming packages from privileged correspondents must be inspected for contraband in the same manner as any other item of privileged correspondence.

History: Effective June 1, 1990.

General Authority: NDCC 12-44.1-24

Law Implemented: NDCC 12-44.1-14

94-02-10-02. Mail as general correspondence. General correspondence is mail between an inmate and a nonprivileged correspondent.

1. Outgoing mail. Outgoing general correspondence must be permitted; however, correspondence with inmates in other institutions may be restricted. Outgoing general correspondence may be read, censored, or rejected and returned to the inmate. A written and signed notice stating the reason the correspondence was censored or rejected and the appeal procedure must be given to the inmate. Within a reasonable time, the inmate may appeal this decision to the jail administrator or the administrator's designated representative. The reviewing authority on appeal may not be the same person who originally censored or rejected the correspondence. The reviewing authority shall document the findings and the disposition of the item. This documentation must be retained by the jail administrator and a copy must be given to the inmate.
2. Incoming mail. Incoming general correspondence may be opened and examined for cash, checks, money orders, or contraband. In cases where cash, checks, or money orders are found, they must be removed and credited to the inmate's account. Where contraband is found, it must also be removed. Incoming general correspondence may be read, censored, or rejected and returned to the sender or retained with the inmate's personal belongings. A written and signed notice stating the reason the correspondence was censored or rejected and the appeal procedure must be given to the sender and the inmate to whom it was addressed. Within a reasonable time, the sender may appeal this decision to the jail administrator or the administrator's designated representative. The reviewing authority on appeal may not be the same person who originally censored or rejected the correspondence. The reviewing authority shall document the findings and the disposition of the item. This documentation must be retained by the jail administrator and a copy must be given to the sender.
3. Packages. Each jail administrator shall provide inmates with a list of items which may be received in packages. All incoming packages must be inspected for contraband. Any item which is not on the approved list must be returned to the sender or placed with the inmate's personal property.

4. Publications. Inmates must be allowed to receive books, magazines, newspapers, and other printed materials that have been sent directly from the publisher. Items not sent directly from the publisher shall be allowed in the discretion of the jailer. Sexually explicit publications may be prohibited.
5. Censorship or rejection of an inmate's general correspondence must meet the following requirements: (a) the correctional officer must show that the censorship or rejection furthers security, order, or rehabilitation; and (b) the censorship or rejection of general correspondence must be no greater than is necessary or essential to security, order, or rehabilitation. These findings must be documented.
6. In each case where it is necessary to remove any item from incoming mail, or censor or reject general correspondence, a written record must be made of such action. Such record must include:
 - a. The inmate's name and number.
 - b. A description of the mail in question.
 - c. A description of the action taken and the reason for such action.
 - d. The disposition of the item involved.
 - e. The signature of the acting officer.

A copy of the record must be given to the inmate and to the sender.

History: Effective June 1, 1990.
 General Authority: NDCC 12-44.1-04, 12-44.1-14
 Law Implemented: NDCC 12-44.1-14

CHAPTER 94-02-11 READING AND LEGAL MATERIALS

Section	
94-02-11-01	Reading Materials
94-02-11-02	Legal Materials Access
94-02-11-03	Legal Materials - Private Access
94-02-11-04	Reading Materials and Legal Materials - Public Libraries or Donations
94-02-11-05	Use of Law Library and Legal Materials
94-02-11-06	Legal Materials Access - Restriction

94-02-11-01. Reading materials. The jail administrator shall provide reading materials to inmates. Reading materials may include the following:

1. Recent newspapers.
2. Magazines.
3. Books.

Reading materials may not be limited to religious materials.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-11-02. Legal materials access. The jail administrator of grade one and grade two jails shall allow inmates without legal counsel either research assistance from a paralegal or law student intern or reasonable access to the following legal materials:

1. A leading law dictionary.
2. A basic book on criminal procedure.
3. A basic book on legal research techniques.
4. A basic treatise on criminal law.
5. Rules of the United States district court, and local district courts which have jurisdiction over the prisoners in the jail facility.
6. Those chapters of the North Dakota Century Code which deal with criminal law and procedures.
7. Photocopies of requested cases from the Northwest 2nd Reporter.
8. A list of all legal representatives within the county.

These legal materials may be provided from the legal library of the state's attorney or county judge. The library of the state's attorney or the county judge must be at least equivalent to any separate library provided to the inmates.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-11-03. Legal materials - Private access. Inmates must be permitted to purchase or receive legal materials from sources approved by the jail administrator.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-11-04. Reading materials and legal materials - Public libraries or donations. Reading materials and additional legal materials not listed in section 94-02-11-02 may be obtained by loan from public libraries or donations from the general public.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-11-05. Use of law library and legal materials. An inmate must be allowed to use the law library or bring legal materials to the inmate's cell for a reasonable period of time unless the jail administrator has reasonable grounds to believe that access to the law library or legal materials will present a threat to jail security, order, or rehabilitation. These reasonable grounds must be documented.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-11-06. Legal materials access - Restriction. Inmate requests for legal materials must be made on a form which clearly states the responsibility of the inmate for the legal materials and the liability for the damage or destruction of the legal materials. An inmate who damages any legal materials shall lose the privilege to obtain further legal materials for a period of time designated by the jail administrator.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

CHAPTER 94-02-12 PRISONER EXERCISE AND RECREATION

Section

94-02-12-01	Indoor Exercise - Ninety-Six-Hour Detention
94-02-12-02	Outdoor Exercise - Thirty Days' Detention
94-02-12-03	Daily Recreation

94-02-12-01. Indoor exercise - Ninety-six-hour detention. Inmates in grade one and grade two jails and juvenile detention centers who are detained for more than ninety-six hours must be provided a minimum of one hour daily physical exercise outside their cells. Physical exercise within the cell may be provided if the jail administrator has reasonable grounds to believe that the release of an inmate from the cell would jeopardize jail security. Such reasonable grounds must be documented. The exercise room must be separate from the dayroom in grade one jails. The exercise room may also be used as a dayroom in grade two jails and juvenile detention centers authorized to detain juveniles for more than ninety-six hours.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-12-02. Outdoor exercise - Thirty days' detention. Inmates in grade one jails who are detained for more than thirty consecutive days and juveniles detained in a juvenile detention center or grade one jail for more than ninety-six hours must be provided a minimum of one hour daily physical exercise in a secure outdoor exercise area. Physical exercise within the living space or indoor exercise area may be provided if the jail administrator has reasonable grounds to believe that the release of an inmate to an outdoor area would jeopardize jail security. Such reasonable grounds must be documented. This one hour outdoor daily physical exercise may be in lieu of the physical exercise provided for in section 94-02-12-01. The jail administrator may require that inmates exercise outdoors when the jail administrator, in the administrator's sound discretion, has determined that the weather is adequate. Jail administrators in all jail classifications are encouraged to provide for physical exercise in a secure outdoor exercise area for all inmates.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-12-03. Daily recreation. Inmates must be allowed daily recreation. Jail administrators in grade one and grade two jails and juvenile detention centers authorized to detain juveniles for more than ninety-six hours shall provide for recreation in a dayroom.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

CHAPTER 94-02-13
EXERCISE OF RELIGIOUS PRACTICES

Section
94-02-13-01 Freedom of Religion

94-02-13-01. Freedom of religion. Inmates shall have the right to practice their religion within limitations necessary to maintain jail security and order.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-14

CHAPTER 94-02-14
GRIEVANCE PROCEDURE

Section
94-02-14-01 Grievance Reporting Forms
94-02-14-02 Grievance Filing Protected
94-02-14-03 Grievance Investigation and Report
94-02-14-04 Appeal

94-02-14-01. Grievance reporting forms. The jail administrator shall provide forms on which an inmate may report a grievance.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-14-02. Grievance filing protected. An inmate reporting a grievance may not be subject to disciplinary action for filing a grievance.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-14-03. Grievance investigation and report. A grievance which is determined not to be obviously trivial or frivolous by the correctional officer charged with the authority to receive and investigate grievances must be promptly investigated and the inmate must be allowed to orally present the grievance to the correctional officer. A written report, setting forth the results of the investigation and any recommendation for the disposition of the grievance, must be given to the inmate filing the grievance and must be filed in the jail records.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-14-04. Appeal. An inmate has the right to appeal the decision of the correctional officer within twenty-four hours of that decision to the jail administrator. If the jail administrator has been involved at a lower level of the grievance procedure, then the jail administrator shall designate the reviewing authority on appeal. The reviewing authority on appeal shall not be the same individual who initially reviewed the grievance as provided in section 94-02-14-03. The reviewing authority shall document the findings and the disposition of the grievance and such documentation must be retained by the jail administrator. A copy must be given to the inmate.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

CHAPTER 94-02-15
CELL CARE - JAIL PROPERTY - PRISONER RESPONSIBILITY

Section	
94-02-15-01	Cell Maintenance
94-02-15-02	Property Destruction
94-02-15-03	Work Requirements
94-02-15-04	Work Requirements - Juvenile

94-02-15-01. Cell maintenance. An inmate shall keep one's cell clean and orderly. An inmate may be required to clean up any mess for which the inmate is responsible.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-15-02. Property destruction. Destruction of or damage to jail property or legal materials by an inmate may result in disciplinary action and referral to the state's attorney for possible criminal prosecution.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-15-03. Work requirements. Convicted inmates may be required to perform work as directed by the jail administrator.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-15-04. Work requirements - Juvenile. An adjudicated or convicted juvenile inmate may be required to perform work provided:

1. The work assignment does not conflict with educational programs; and
2. The work is not prohibited by state and federal statutes and regulations pertaining to child labor.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

CHAPTER 94-02-16 PROHIBITED ACTS AND DISCIPLINARY PROCEDURE

Section

94-02-16-01	Rules of Conduct
94-02-16-02	Disciplinary Action Procedures
94-02-16-03	Jail Rules Violation - Report
94-02-16-04	Investigation
94-02-16-05	Disciplinary Hearing - Notice
94-02-16-06	Administrative Action Prior to Hearing
94-02-16-07	Hearings Officer
94-02-16-08	Conduct of Hearing
94-02-16-09	Report of Hearing
94-02-16-10	Appeal by Inmate
94-02-16-11	Segregation of Inmates

94-02-16-01. Rules of conduct. The jail administrator shall establish written rules of inmate conduct specifying acts prohibited and the range of penalties that may be imposed. All disciplinary action of any kind must be documented and must be reviewed by the jail administrator.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-16-02. Disciplinary action procedures. The jail administrator shall develop written procedures for disciplinary action implementing the rules of this chapter. Sections 94-02-16-04, 94-02-16-05, 94-02-16-06, 94-02-16-07, 94-02-16-08, and 94-02-16-09 do

not apply to grade three jails. Jail administrators in grade three jails shall review all disciplinary action.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-04, 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-16-03. Jail rules violation - Report. A correctional officer who observes or has knowledge of a violation of the jail rules shall submit a written report of the incident to the jail administrator which must include the name of the inmate, the offense charged, a brief description of the circumstances surrounding the incident, the names of the complainants and any witnesses, the name of the correctional officer making the report and any immediate disciplinary action taken. The reporting officer may not be utilized in any investigatory or reviewing capacity. The responsibility of the reporting officer shall cease when the report is submitted unless the officer is required to clarify or supplement the report. The reporting officer may not be the hearings officer or member of the disciplinary hearings board as provided in section 94-02-16-07 or the reviewing officer on appeal as provided in section 94-02-16-10.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-16-04. Investigation. The jail administrator shall designate a correctional officer who shall review the disciplinary report, investigate the circumstances, and either dismiss the complaint against the inmate or proceed with further disciplinary action or disciplinary proceedings. The correctional officer shall submit a written report of the findings and actions to the jail administrator. The correctional officer may not be the hearings officer or member of the disciplinary hearings board as provided in section 94-02-16-07 or the reviewing officer on appeal as provided in section 94-02-16-10.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-16-05. Disciplinary hearing - Notice. An inmate violating a jail rule which could result in disciplinary action involving disciplinary segregation shall receive a disciplinary hearing and at least a twenty-four-hour notice of the charges prior to the disciplinary hearing.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-16-06. Administrative action prior to hearing. Emergency circumstances may require that an inmate/detainee be placed in administrative isolation for a violation of the facility rules prior to a disciplinary hearing. Such emergency and administrative action must be documented. A disciplinary hearing must follow such administrative action as soon as possible.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-16-07. Hearings officer. The jail administrator shall appoint a correctional officer who is responsible for conducting hearings involving jail rule violations or the jail administrator may appoint correctional officers to a disciplinary hearings board. The jail administrator may be the hearings officer or a member of the disciplinary hearings board if the administrator is not the reviewing officer on appeal as provided in section 94-02-16-10. The hearings officer or disciplinary hearings board shall receive copies of the reports required in sections 94-02-16-03 and 94-02-16-04.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-16-08. Conduct of hearing. An inmate has the right to appear at the inmate's disciplinary hearing and testify on the inmate's own behalf. The inmate must be allowed to call material witnesses and present documentary evidence in the inmate's defense if permitting the inmate to do so will not jeopardize security, order, or rehabilitation. The hearings officer or the disciplinary hearings board may, in its sound discretion, allow the inmate to cross-examine witnesses.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-16-09. Report of hearing. The hearings officer or the disciplinary hearings board shall make a written report including the findings and disposition to the jail administrator and the reviewing officer on appeal as provided in section 94-02-16-10. A copy of this report must be retained by the jail administrator.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-16-10. Appeal by inmate. An inmate has the right to make a written appeal of the decision of the hearings officer or disciplinary

hearings board within twenty-four hours of that decision to the jail administrator. If the jail administrator has been involved at a lower level of the disciplinary procedure, then the jail administrator shall designate an individual who has not been involved at a lower level of the disciplinary procedure as the reviewing authority on appeal. The reviewing authority shall make a determination, in writing, based on the written findings at the disciplinary hearing. Any disciplinary action recommended by the hearings officer or disciplinary hearings board may be reduced on appeal but not increased.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-16-11. Segregation of inmates. Inmates may be segregated from the remainder of the jail population without a disciplinary hearing if the segregation cell has the same accommodations as those provided to other inmates and the inmate is not deprived of privileges that are available to other inmates.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

CHAPTER 94-02-17 CORRECTIONAL OFFICER TRAINING

Section
94-02-17-01 Orientation Training Program
94-02-17-02 Correctional Officer Training Program

94-02-17-01. Orientation training program. An orientation training program for correctional officers must provide for orientation training within ninety days of initial employment and annual inservice training. The orientation training program must be developed by the jail administrator to meet the particular needs of the jail.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-04, 12-44.1-24
Law Implemented: NDCC 12-44.1-04

94-02-17-02. Correctional officer training program. All full-time and part-time correctional officers and jail administrators shall satisfactorily complete a training program in accordance with North Dakota Century Code chapter 12-62 and the regulations adopted by the criminal justice training and statistics division.

History: Effective June 1, 1990.

General Authority: NDCC 12-44.1-04, 12-44.1-24
Law Implemented: NDCC 12-44.1-04

CHAPTER 94-02-18
INSPECTIONS

Section
94-02-18-01 Inspections
94-02-18-02 Access for Inspection

94-02-18-01. Inspections. Inspections of jails must be made pursuant to North Dakota Century Code chapter 12-44.1 and this article.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-18-02. Access for inspection. Agents of the director of the department of corrections and rehabilitation may enter any jail in this state at any time without prior notice, must be admitted without unnecessary delay, and may confer privately with any employee or inmate.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

CHAPTER 94-02-19
APPLICATION PROCEDURE FOR JAIL CLASSIFICATION
AND INMATE CATEGORIES

Section
94-02-19-01 Application for Jail Classification
94-02-19-02 Notification of Classification

94-02-19-01. Application for jail classification. The jail administrator of each jail shall submit an application for a grade classification which shall specify that the jail is to be considered for a grade one, grade two, or grade three jail, or a juvenile detention center and shall also specify the number of categories of inmates, as set out in North Dakota Century Code section 12-44.1-09, the jail will detain.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

94-02-19-02. Notification of classification. Within a reasonable period of time, the director of the department of corrections and rehabilitation shall notify the jail administrator of the approved jail classification and the approved number of categories of inmates that may be detained in the jail. The director of the department of corrections and rehabilitation shall also notify the jail administrator of the terms of any variances that have been granted.

History: Effective June 1, 1990.
General Authority: NDCC 12-44.1-24
Law Implemented: NDCC 12-44.1-24

TITLE 95

Agricultural Products Utilization Commission

2. Purpose of commission. The purpose of the commission is to provide assistance to research projects dealing with the development of new or expanded uses, or both, for North Dakota agricultural products; to develop the technical basis for more efficient systems for processing and marketing agricultural products and byproducts; and to promote efforts to increase productivity and provide added value to agricultural products.
3. Commission membership. The commission consists of nine members as designated in North Dakota Century Code section 4-14.1-03.

History: Effective June 1, 1990.
 General Authority: NDCC 28-32-02
 Law Implemented: NDCC 4-14.1-02

ARTICLE 95-02

RESEARCH AND MARKETING GRANT PROGRAM

Chapter

95-02-01	Applicant Eligibility
95-02-02	Evaluation and Funding Criteria
95-02-03	Procedure of Grant Requests
95-02-04	Supplemental Program Information

CHAPTER 95-02-01 APPLICANT ELIGIBILITY

Section

95-02-01-01	Applicant Eligibility
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95-02-01-01. Applicant eligibility.

1. Preference will be given to the applicants:
 - a. Whose industrial and nonfood production processes utilize agricultural products.
 - b. Whose food, feed, and fiber products and uses are innovative and add to the value of agricultural products.
2. Consideration will not be given to applications for:
 - a. Research which does not clearly meet the commission's stated objectives.

- b. Proposals which are aimed solely at business expansion or creation without regard to agricultural products utilization.
- c. Research that cannot reasonably be expected to result in a viable commercial application, or is or has been duplicated by other research efforts.

History: Effective June 1, 1990.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 4-14.1-02

CHAPTER 95-02-02 EVALUATION AND FUNDING CRITERIA

Section
95-02-02-01 Evaluation and Funding Criteria

95-02-02-01. Evaluation and funding criteria. Proposals will be evaluated upon a basis of one hundred possible points, according to the following criteria. Up to ten points may be awarded by the commission based on the likelihood of each proposal's success:

1. Probability and extent of new wealth creation. Preference will be given to applications which demonstrate a high probability of job and wealth creation. While the commission does not make any specific requirements for jobs created per dollar granted, a close review will be made of return-on-investment. Up to thirty points may be awarded on this criterion.
2. Credibility and merit. The commission will review each proposal as to its technical and commercial feasibility. Proposals which feature research that is innovative as well as commercially plausible will receive preference. A final criterion will focus on the relative competence and technical qualifications of project principals. Up to thirty points may be awarded on these criteria.
3. Timeliness. Preference will be given to proposals demonstrating a high probability of rapid commercialization. Up to fifteen points may be awarded on this criterion.
4. Matching funds. Priority will be given to projects which demonstrate a shared commitment for funding from other private or public sources, or from the applicant. Matching funds may be in the form of cash or in-kind services, or both. Approved indirect costs may qualify as matching funds. Disbursement of funds will be contingent upon evidence that matching funds

have been allocated to the proposal. Up to ten points may be awarded on this criterion.

5. Geographic consideration. Preference will be given to the proposals which center efforts on nonurban locales. When the proposal requires specific research which cannot possibly be carried out in rural North Dakota, consideration will be given to the ultimate development and commercialization of the results of the proposal, with the same rural preference. Up to five points may be awarded on this criterion.

History: Effective June 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 4-14.1-02

CHAPTER 95-02-03 PROCEDURE FOR GRANT REQUESTS

Section
95-02-03-01 Procedure for Grant Requests

95-02-03-01. Procedure for grant requests. Applications are limited to twenty typed, single-spaced or double-spaced eight and one-half inch by eleven inch pages, including the application form and any attachments. Fifteen copies of the proposal must be delivered or mailed to the commission. Using the commission's grant proposal form, applicants are required to include the following in their proposals:

1. Application cover sheet, including names and addresses of applicant organization, principal contact, project title, fund request, and total project budget.
2. Executive summary, limited to two pages, summarizing the essential elements of the proposal, including narrative and funding request.
3. Project narrative, including:
 - a. Description of the product or process which will result from the research.
 - b. Description of the planned commercialization efforts, including market research to date by the applicant or others and potential market for product or process to be developed.
 - c. Description of the research methodology to be employed including objectives, tasks, milestones, and research

site, and a schedule of planned activities and timeframe for completion.

- d. Summary of prior research done by the applicant or others and the development of the product or process to date.
 - e. Explanation of how the technology or innovation will benefit the applicant, the end-user of the project, or both.
 - f. Explanation of why this particular project is needed and how the project will further develop existing technologies.
 - g. Explanation of patents or regulatory approval granted or expected to be granted as a result of successful outcome of research.
 - h. Explanation of the estimated benefit of the project to one or more sectors of North Dakota agriculture, such as increased markets, new uses, or value added to agricultural products.
 - i. Explanation of the estimated benefit of the project in terms of job creations and economic development.
 - j. List of project cosponsors (including name of organization, address, telephone, key contact, and nature of participation). Letters of intent to participate must be attached.
 - k. List of principal investigators and other members of the research team, including their respective expertise and responsibilities under the project. Resumes, limited to two pages, must be attached.
1. Review of research.
4. List and describe other funding sources.
 5. Project budget. Attach a detailed project budget including the following categories:
 - a. Salaries, wages, and fringe benefits.
 - b. Equipment.
 - c. Materials and supplies.
 - d. Travel.
 - e. Publications costs.

- f. Computer costs.
 - g. All other direct and indirect costs.
6. Include breakdowns of the planned expenditures by funding source:
- a. Agricultural products utilization commission funds request.
 - b. Private funds.
 - c. Federal funds.
 - d. Other matching funds, identified by individual source.

(Attach letters of commitment for matching funds to be provided contingent upon approval of this grant.)

Supplementary attachments will be counted within the twenty-page proposal limitation. Promotional materials or materials not directly related to the proposals are discouraged.

History: Effective June 1, 1990.
 General Authority: NDCC 28-32-02
 Law Implemented: NDCC 4-14.1-02

CHAPTER 95-02-04
 SUPPLEMENTAL PROGRAM INFORMATION

Section
 95-02-04-01 Supplemental Program Information

95-02-04-01. Supplemental program information.

1. Funding level. Proposals are not limited to a specific dollar amount. However, the commission's grant moneys are finite. The commission reserves the right to increase or decrease the amount of requested funding based on its findings and on its level of available funds. Requests must be justified with respect to the scope of the research.
2. Funding period. Up to one million dollars will be available for utilization and marketing research grants for the period ending June 30, 1991. Proposals may be submitted anytime within the biennium. Deadline dates for submission are: July first, October first, January first, and April first. Reviews and grants awards will be made on a quarterly basis. With respect to the funding criteria, multiyear research requests

will be accepted and funded, subject to annual review and funding renewal.

3. Multiple proposals. Multiple proposals from the same applicant will be considered if each proposal covers distinctly different research projects. Proposals which have been submitted under other state grant programs may be considered simultaneously by the commission.

Proposals which contain matching funds from other grant programs must demonstrate contingent approval from appropriate sources prior to release of funds by the commission.

4. Evaluation process. Initial screening for completeness and eligibility of all proposals will be completed upon receipt by the commission staff. Should revisions or corrections be deemed necessary, the applicant may withdraw and resubmit without penalty or delay.

Each proposal will be considered individually, and according to the stated criteria, by the entire commission. A decision to accept, modify, or deny each will then be made, by majority vote of at least a quorum of the commission.

Should the process produce a funding level less than the amount requested in the proposal, the commission staff will confer with the applicant to determine whether the amount recommended would alter the project's feasibility.

By law, no member of the commission may participate in, or vote on, a decision of the commission relating to an organization in which that individual has a direct personal financial interest.

5. Grant administration and reporting. Successful applicants shall adhere to the conditions outlined in this article and North Dakota law. Following approval of the grant award, a formal grant contract will be executed between the agricultural products utilization commission and the grantee. This agreement will specify the agreed upon objectives, tasks to be performed, time line and budget, fund release schedule, and any other conditions specific to the individual proposal.

Under the terms of all grant contracts, the grantee will be required to submit to the commission periodic interim reports outlining progress and both time line and budget compliance. In most cases, the entire grant amount will not be released at the time of the commission's decision. In such instances, funds release will be tied to the grant contract, and any insufficiencies with the contract may result in withholding of further funding.

Grantees will be required to submit a final written report describing the work performed and the results obtained, prior to final release of grant funds. This report must be supplemented by a financial report of all expenses actually incurred and income generated by the project.

6. **Audit.** To protect the investment of the commission and of the people of North Dakota, all financial documents, books, receipts, orders, expenditures, electronic data and accounting procedures, and practices of the grantee are subject to examination by or for the commission at any time for three years following the completion of the project.
7. **Eligible uses of funds.** Agricultural products utilization commission grant funds may be used to pay salaries, buy supplies, and cover day-to-day expenses of the project.
8. **Confidentiality.** To the extent allowed under North Dakota law, the commission may limit the dissemination of information concerning a proposal, but in any event, does not assume any liability for inadvertent disclosure.
9. **Ownership.** Subject to the policies, if any, of participating public programs and entities, rights to use products, processes, or services developed under this grant program will remain with the grantee.

Subject to the same policies, the ownership and all rights to project outcomes may revert to the commission if the grantee or assignee fails to market the product, process, or service in accordance with individually negotiated funding contracts. In such cases, the commission may provide notice and the opportunity to others to assume control of research projects. In these cases, priority will be given to any licensee under such property or others who benefit North Dakota commercially, with first priority being given to small firms in nonurban areas of the state.

10. **Royalty agreements.** In certain cases, the commission may receive royalties on the sale or lease of any product, process, or service developed under a commission grant. Royalty agreements will be negotiated at the time of the grant award and will be structured so that the commission may recover at least a portion of its investment of public funds. Repaid funds will be used to make new investments in other agricultural products utilization research projects.

History: Effective June 1, 1990.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 4-14.1-02

TITLE 7
Agriculture, Commissioner of

MAY 1990

7-02-02-07. Identification of hives. All beekeepers shall identify their hives by one of the following: (1) painting of beekeeper's name and address or phone number on hive; or (2) posting of beekeeper's name and address or phone number in apiary; or (3) branding of hives. The commissioner may record any brands submitted to the commissioner by a beekeeper for identification purposes. Each beekeeper shall post the beekeeper's name, address, and phone number in each of the beekeeper's apiaries by placing a board or weatherproof placard bearing the information at or near the main entrance of the apiary. The board or placard may be placed on a beehive. The board or placard must be at least eight inches [203.2 millimeters] high by eleven inches [279.4 millimeters] long. The letters and numbers must be at least one-half inch [12.7 millimeters] high, must withstand weathering, and must be easily readable. Alternative sign or lettering dimensions must be approved in writing by the department. Failure to post each apiary or to maintain such posting will cause the apiary, all equipment, and bees to be deemed abandoned and subject to seizure by the state bee inspector.

History: Effective July 1, 1983; amended effective May 1, 1990.

General Authority: NDCC 4-12.2-02

Law Implemented: NDCC 4-12.2-14

7-02-02-10. Honeybee tracheal mite - Statement of purpose - Inspection upon request.

1. The commissioner of agriculture recognizes that large numbers of bees belonging to migratory beekeepers from various states that come to North Dakota for the beekeeping season are infested with the honeybee tracheal mite, such infestation being apparently widespread. No chemicals currently exist or have been approved to control infestations of the honeybee tracheal mite. The exact detrimental effects of the tracheal

~~mite are not currently known, although research is continuing to determine those effects.~~

2. The state bee inspector may accept certificates of health from other states or countries that do not indicate information about whether the bees have been inspected for the honeybee tracheal mite or that the bees are free of infestation by the honeybee tracheal mite. The state inspector will not sample or inspect for the honeybee tracheal mite unless specifically requested by a beekeeper and the state bee inspector determines that it is necessary for the requesting beekeeper's bees to be inspected for the mite before the return of those bees to another state or country. The cost of sampling for the honeybee tracheal mite is the responsibility of the requesting beekeeper.
3. If the beekeeper requests inspection, and the apiaries are found to be mite infested, any certificates of health issued to the beekeeper must state on the certificate that the bees are known to be infested with the honeybee tracheal mite, unless the bees of the infested apiary have been destroyed or successfully treated with approved chemicals. However, no health certificates will be issued to the beekeeper pursuant to inspection if the destination country, state, or county of the beekeeper requires honeybee tracheal mite free certification.
4. No beekeeper may use any chemical to control the honeybee tracheal mite unless the chemical has been approved by the United States environmental protection agency and the label instructions of the chemical are followed.

History: Effective June 1, 1986; amended effective April 1, 1987; May 1, 1990.

General Authority: NDCC 4-12.1-02

Law Implemented: NDCC 4-12.2-16, 4-12.2-18, 4-12.2-19, 4-12.2-21

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

1. "Adequate fence" means legal fence as defined in North Dakota Century Code section 47-26-01.
2. "Adjacent lands" means lands bordering the wetland.
3. "County assessment team" means a local United States department of agriculture soil conservation service representative of a local soil conservation district, a representative of the county water resources board, and a district representative of the North Dakota game and fish department.

- 4- "Drainage" means vulnerable to destruction through artificial or natural process.
- 5- 4. "Participant" means landowner participating in the program.
- 6- 5. "Program" means the North Dakota state waterbank program.
- 7- 6. "State assessment team" means one representative representatives from the North Dakota department of agriculture, one representative from the North Dakota game and fish department, one representative from the North Dakota state engineer's staff, and one representative from the United States department of agriculture's soil conservation service, and the United States fish and wildlife service.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-01

7-08-01-03. Cooperative agreement State assessment team.

1- The commissioner shall assemble a state assessment team and have a cooperative agreement signed by the various agencies so that they may assist the commissioner in fulfilling the objectives of the program. The state assessment team shall, as directed by the commissioner, make recommendations to the commissioner regarding the areas submitted for participation. The state and assessment team shall, and develop management guidelines to be approved by the commissioner which must include technical and management practices and rates of payment and a standardized priority system for evaluating applications.

2- The commissioner shall assemble the county assessment teams and have a cooperative agreement signed with the various agencies so that they may assist the commissioner and the state assessment team in fulfilling the objectives of the program. The county assessment teams shall, as directed by the commissioner, help prepare the application, evaluate the acreage [hectarage] offered, indicate the order of priority for the county applications, and forward the county applications to the commissioner's office with appropriate comments.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990.

General Authority: NDCC 61-31-01

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

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

1. Applications for participation in the program are to be submitted to the local United States department of agriculture's soil conservation service representative who will date and review the applications for compliance with approved application procedures and forward the applications to the county assessment team North Dakota department of agriculture.
2. The county assessment team shall, as expeditiously as climatic conditions allow, investigate the wetlands delineated and any offered adjacent land delineated in the application.
3. The county assessment team shall:
 - a. Determine the type of wetland.
 - b. Determine whether it is feasible and practical to drain the wetland and if sedimentation problems exist.
 - c. Rate the recreational and other public values of the wetland.
 - d. Establish a wetland conservation and development plan for the area if it is desired by the participant.
4. Twice a year, prior to February fifteenth or September fifteenth of each year, the county assessment team shall submit a written report to the commissioner which lists the priority of the applications in numerical order utilizing a standardized priority system prepared by the state assessment team and approved by the commissioner.
5. Within ten days after the receipt of the county assessment team's findings, conclusions, and recommendations, the commissioner shall submit applications to the state assessment team which will review and list in priority all of the applications submitted by the county assessment teams. The state assessment team may change the order of priority established by the county assessment team.
6. Twice a year, prior to March first or October first of each year, the The state assessment team shall submit a written report of its findings, conclusions, and recommendations to the commissioner who will make the final determination of applications to be funded according to the commissioner's evaluation of the recommendations and available waterbank funds.
7. Within thirty days after receipt of the state assessment team's findings, conclusions, and recommendations, the commissioner shall forward a signed contract to the successful applicants. Copies will also be sent to the local soil conservation district, the North Dakota game and fish

~~department, the state water commission, and the county water resource board.~~ A letter of nonacceptance will be mailed to unsuccessful applicants. Unsuccessful applications ~~will be returned to the local soil conservation district office.~~ ~~These~~ may ~~then~~ be resubmitted to the commissioner local United States department of agriculture's soil conservation service along with new applications prior to the next application deadline. ~~Personal contact will be made with each successful applicant by a representative appointed by the commissioner.~~

- ~~8-~~ 3. Renewal of agreements can take place after a written proposal to do so is received from the participant prior to termination of the contract. Such renewal will be subject to redetermination of payment rates.
- ~~9-~~ 4. The acreage designated for participation must be documented on an agricultural stabilization and conservation service farm photo, described by linear measurements, and attached to the application or contract, or both.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990.

General Authority: NDCC 61-31-01

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

7-08-01-05. Reassessment procedure.

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

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990.

General Authority: NDCC 61-31-01

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

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

1. The base rate of payment for participation in the program shall be comparable to the rate used in the federal waterbank program.
2. A base rate shall be established for effecting a wetland conservation and development plan for adjacent lands.
3. The base rate shall be increased for allowing walking public access to the program land for purposes specified in North Dakota Century Code section 61-31-06.
4. Payments shall be made in accordance with the agreement between the commissioner and the participant and in accordance with the management and rate of payment guidelines adopted by the state assessment team. Repealed effective May 1, 1990.

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

General Authority: NDCC 61-31-01

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

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

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

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990.

General Authority: NDCC 61-31-01

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

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

1. The number of years of participation.
2. The present rate and conditions that vary the rate of payment.
3. The incentive payments, if applicable.
4. Duties of the parties to the waterbank agreement as prescribed in North Dakota Century Code sections 61-31-04 and 61-31-05.
5. Signatures of the commissioner, and the landowner of the designated area, and the tenant or operator of the land, if the operator is not the landowner participant.
6. Whether or not the participant will allow the land to be open for emergency haying or grazing and conditions applicable to the allowance of emergency haying or grazing.
7. A clause permitting access to the program lands for inspection by a representative of the commissioner.
8. A copy of the waterbank program rules and the management guidelines.
9. A statement that the participant agrees to manage wetland acreage and adjacent land in accordance with the waterbank agreement and management guidelines adopted by the state assessment team.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990.

General Authority: NDCC 61-31-01

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

7-08-01-10. Drought emergency.

- ~~+~~ If the governor or the United States department of agriculture declares a drought emergency, the grass cover on lands included in the program may be released to a qualified participant for haying or grazing with the authorization of and under the terms prescribed by the commissioner as provided in subsection 4 of North Dakota Century Code section 61-31-05.
- ~~a.~~ 1. A written request to open program lands for haying or grazing must be submitted to the commissioner by the participant.
- ~~b.~~ 2. The release date must be determined by the commissioner of agriculture with the approval of the state game and fish commissioner. Under no circumstances shall emergency haying or grazing be allowed prior to July fifth.

~~c.~~ 3. Notice of approval of the request to hay or graze a waterbank tract and the conditions to do so must be mailed to the participant.

~~d.~~ 4. Conditions shall include, but are not limited to, the following: date on which entry can be made on the land and date by which all hay, machinery, or livestock must be removed from the tract; the amount and date by which, or how payment is to be submitted to the commissioner's office; the date on which the tract will be open to haying or grazing, or both. The payment for hay or grass may be deducted from the next waterbank payment, provided it is not the last year of the contract period.

~~2.~~ In the event the participant does not utilize this option to hay or graze in a drought emergency, or does not qualify for emergency haying or grazing, the commissioner may conduct a lottery, subject to the approval of the participant, to award haying or grazing privileges to qualified applicants using the following procedure:

~~a.~~ The commissioner shall give published notice that program land will be open to grazing or haying at dates established with the approval of the state game and fish commissioner.

~~b.~~ The commissioner shall publish notice that written applications to participate in the lottery must be received by the commissioner's office within five days after the date of final notice.

~~c.~~ Notice must run for three consecutive days in a daily newspaper of general circulation in the county where the majority of the program land is situated and for one day in the official county newspaper, if the official newspaper is a weekly. Notice must include the participant's name and address, the legal description of the program land being open for haying or grazing, the price established by the commissioner on a per-acre basis for the haying or grazing, and the date by which hay, machinery, or livestock must be removed from the program land.

~~d.~~ Seven days after the date of final notice, the commissioner shall conduct a lottery among the qualified applicants and award haying or grazing rights.

~~e.~~ Notice of award of rights and conditions for agricultural use of the program land must be mailed to the successful qualified applicants.

~~f.~~ Conditions for agricultural use pursuant to the lottery must include whether the land may be hayed or grazed, the

date on which entry can be made on the program land; the date by which all hay, machinery, or equipment must be removed from the program land; and the amount and date by which payment is to be remitted to the commissioner's office.

g. All expenses incurred by the commissioner's office in implementing the lottery will be reimbursed from the gross receipts of the lottery.

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

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-05

7-08-01-11. Violations.

1. It is a violation of the waterbank agreement if the participant does not fulfill each and every term of the waterbank agreement established between the participant and the commissioner, including the management guidelines adopted by the state assessment team which are incorporated by reference into the waterbank agreement.
2. If the commissioner determines a violation of the waterbank agreement has occurred, the commissioner shall notify the participant by registered or certified mail at the participant's post office address of record. The notice must specify the nature of the violation and that the affected participant may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of a demand for hearing, the commissioner shall set a date for the hearing not less than ten days after the demand is received a hearing must be held in accordance with North Dakota Century Code chapter 28-32.
3. The penalties for violations determined as a result of hearing or for violations where the affected participant does not demand a hearing must be imposed in accordance with subsection 5 of North Dakota Century Code section 61-31-04.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-04

