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TITLE 7  
Agriculture, Commissioner of



APRIL 1992

7-02-02-00.1. Apparently disease-free - Definition. "Apparently disease-free" means that after an inspection of five percent of the colonies operated in North Dakota, less than three percent American foulbrood and an average of two or less varroa mites are detected through an ether roll test or an average of forty mites or less through an apistan strip test in the colonies inspected.

History: Effective April 1, 1992.

General Authority: NDCC 4-12.2-02

Law Implemented: NDCC 4-12.2-01

7-02-02-00.2. Treatment of diseased bees.

1. Varroa mites. Colonies in apiary locations where varroa mites are detected must be treated with an approved pesticide at an approved rate or destroyed.

In order to allow orderly development of treatment programs and management programs that are not pesticide based, the department may provide advance written approval of such programs. Such approval must be based upon a written application by the beekeeper or researcher and the department shall evaluate such applications for such factors as feasibility, merit, and legality.

2. American foulbrood. Colonies with American foulbrood must be treated with an approved antibiotic or destroyed.

History: Effective April 1, 1992.

General Authority: NDCC 4-12.2-02

Law Implemented: NDCC 4-12.2-16



7-02-02-00.3. Entrance permit requirements. In addition to the requirements in North Dakota Century Code section 4-12.2-20, before an entrance permit will be granted, the beekeeper shall verify to the satisfaction of the department that treatment has been completed in colonies from apiary locations where varroa mites or American foulbrood had been detected.

History: Effective April 1, 1992.  
General Authority: NDCC 4-12.2-02  
Law Implemented: NDCC 4-12.2-20

7-02-02-02. Registration of apiaries. When applications for apiary locations are received on the same date by the commissioner of agriculture and the apiary locations are within two miles [3.22 kilometers] of one another, priority shall be given to the apiary with the earlier date of written permission from the property owner. This is in reference to new commercial apiaries or apiaries with territorial rights. Any further conflicts as to yard priority will be resolved by the commissioner of agriculture. Repealed effective April 1, 1992.

History: Effective July 1, 1983.  
General Authority: NDCC 4-12.2-02  
Law Implemented: NDCC 4-12.2-07

7-02-02-03. Measurement of two-mile [3.22-kilometer] radius restriction. All commercial apiaries, for the purpose of enforcing North Dakota Century Code section 4-12.2-09, shall be located not less than two miles [3.22 kilometers] from the perimeter of the quarter section of a commercial apiary operated by another beekeeper. Repealed effective April 1, 1992.

History: Effective July 1, 1983.  
General Authority: NDCC 4-12.2-02  
Law Implemented: NDCC 4-12.2-09

7-02-02-04. Sale or transfer of commercial locations. Notification of the sale or transfer of a commercial location shall be made to the department by submitting a copy of the document showing written permission from the property owner of the land on which an apiary is located to beekeeper. Repealed effective April 1, 1992.

History: Effective July 1, 1983.  
General Authority: NDCC 4-12.2-02  
Law Implemented: NDCC 4-12.2-09

7-02-02-05. Pollination locations. Apiaries used for pollination service must be registered with the department of agriculture. Registration will not be granted until all fees required under North Dakota Century Code chapters 4-12.1 and 4-12.2 are paid. Registration

must include the following information: (1) crop to be pollinated and number of acres [hectares]; (2) number of colonies to be used for pollination; (3) name and telephone number of beekeeper or agent; and (4) legal description of apiary to the nearest quarter section. Bees may not be placed for pollination service except on the quarter sections described in the registration. Bees may be placed on a registered quarter section adjacent to the quarter section on which the crop to be pollinated is actually located only if the adjacent quarter section is also owned, leased, or rented by the applicant making application for pollination locations. Repealed effective April 1, 1992.

History: Effective July 1, 1983, amended effective June 1, 1989.

General Authority: NDEC 4-12.2-02

Law Implemented: NDEC 4-12.2-10d

7-02-02-06. Crops pollinated. Pollination locations may be allowed only on the following crops:

1. Leguminosae. Placement of bees is limited to five days prior to onset of blossoming and bees are to be removed five days after ninety-five percent of flowers have wilted or five days after harvest, as determined by the department of agriculture.

~~Alfalfa—Medicago sativa L.~~

~~For certified seed production only.~~

~~Sweetclover—Melilotus alba or officinalis.~~

~~For seed production only.~~

~~Sainfoin—Onobrychis viciifolia Scop~~

~~Red clover—Trifolium partense L.~~

~~For seed production only.~~

~~Alsike clover—Trifolium hybridum L.~~

~~For seed production only.~~

~~Crownvetch—Coronilla varia L.~~

~~For seed production only.~~

~~Hairy vetch—Vicia villosa Roth~~

~~Birdsfoot trefoil—Lotus corniculatus L.~~

2. Compositae. Placement of bees is limited to five days prior to when first heads open, and bees may remain throughout entire flowering period, as determined by the department of agriculture.

~~Sunflower—Helianthus annuus~~

~~Safflower—Carthamus tinctorius L.~~

3. Cruciferae. Placement of bees is limited to five days prior to ninety-five percent bloom of the crop, and bees are to be removed five days after harvest, as determined by the department of agriculture.

~~Oilseed rape—Brassica napus~~

~~Yellow mustard—Brassica alba~~



Brown mustard—*Brassica juncea*

4. ~~Cucurbitaceae. Placement of bees is limited to five days prior to onset of flowering, and bees are to be removed when ninety-five percent of flowers have opened and have been pollinated, as determined by the department of agriculture.~~

~~Cucumber—*Cucurbita sativus*  
Cantaloupe—*Cucumis melo* L.  
Watermelon—*Colocynthis citrullus*~~

5. ~~Buckwheat—*Fagopyrum esculentum*. Placement of bees is limited to five days prior to onset of blossoming, and bees are to be removed five days after harvest, as determined by the department of agriculture.~~
6. ~~Miscellaneous crops. Those crops not listed, which are benefited by bee pollination, as determined by the department of agriculture. Repealed effective April 1, 1992.~~

History: Effective July 1, 1983.  
General Authority: NDEC ~~4-12.2-02~~  
Law Implemented: NDEC ~~4-12.2-10~~

7-02-02-07. Identification of hives. 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. Repealed effective April 1, 1992.

History: Effective July 1, 1983; amended effective May 1, 1990.  
General Authority: NDEC ~~4-12.2-02~~  
Law Implemented: NDEC ~~4-12.2-14d~~

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.



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. Repealed effective April 1, 1992.

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

#### CHAPTER 7-02-03

#### ALFALFA LEAFCUTTER BEE PROVISIONS

[Repealed effective April 1, 1992]



TITLE 13

Banking and Financial Institutions, Department of



APRIL 1992

STAFF COMMENT: Chapter 13-02-14 contains all new material but is not underscored so as to improve readability.

CHAPTER 13-02-14  
LIFE INSURANCE

Section	
13-02-14-01	Definitions
13-02-14-02	Authority to Purchase Life Insurance
13-02-14-03	Limitations
13-02-14-04	Financial Information
13-02-14-05	Documentation
13-02-14-06	Waiver

13-02-14-01. Definitions. "Executive officer" means the chairman of the board, the president, each vice president, the cashier, the secretary, and the treasurer of a bank or bank holding company, unless such officer is excluded, by resolution of the board of directors or by the bylaws of the bank or bank holding company, from participation, other than in the capacity of a director, in major policymaking functions of the bank or bank holding company, and the officer does not actually participate in major policymaking functions of the bank or bank holding company.

History: Effective April 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-03-02

13-02-14-02. Authority to purchase life insurance. Banks may purchase and hold an interest in life insurance policies on the life of its executive officers, directors, borrowers, and may purchase life



insurance in connection with employee compensation and benefit plans subject to the limitations in this chapter. The bank is not authorized to purchase policies if the board's basis for its insurable interest is primarily based upon the executive officer or director being a shareholder of the bank or bank holding company. Funding for the payment of employee compensation and benefit plans may be made or split in a joint manner between the bank, employee, or bank holding company as in "split dollar" or other insurance plans. Banks may purchase individual or group policies in connection with deferred compensation agreements entered into with its officers and employees. Banks may purchase policies on directors to fund a deferred directors fees program.

History: Effective April 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-03-02

#### 13-02-14-03. Limitations.

1. A bank is not authorized to purchase life insurance policies for the bank's own account as an investment.
2. The bank's purchase of any life insurance policy underwritten by one company on an executive officer cannot exceed twenty-five percent of the bank's capital stock and surplus as measured by the policy's cash surrender value.
3. The bank's purchase of any life insurance policy underwritten by one company on a director cannot exceed ten percent of the bank's capital stock and surplus as measured by the policy's cash surrender value.
4. A bank is not allowed to commit an amount toward the purchase of life insurance policies, as measured by the cash surrender value, that is more than twenty-five percent of the bank's capital stock, surplus, and undivided profits.
5. The bank is not authorized to purchase life insurance policies for estate planning purposes.
6. The bank's authority to hold life insurance on any executive officer ceases when the executive officer is no longer employed by the bank, or no longer meets the definition of an executive officer.
7. The bank's authority to hold life insurance on a director ceases when that director is no longer a member of the board of directors.
8. The bank's authority to purchase life insurance on borrowers is subject to the following:

- a. The face value of the life insurance policy cannot exceed the borrower's obligation to the bank.
  - b. The bank has not charged off nor is expected to charge off the borrower's obligation.
9. In purchasing life insurance in connection with employee compensation and benefit plans, the bank is not authorized to hold the policies if no liability exists under the deferred compensation plans unless specifically approved by the state banking board.

History: Effective April 1, 1992.  
General Authority: NDCC 6-01-04  
Law Implemented: NDCC 6-03-02

13-02-14-04. Financial information. Prior to purchasing a policy, the board of directors shall evaluate the financial condition and rating, if any, of the insurance company by acquiring adequate and current financial information. The board shall, on at least an annual basis, continue to evaluate the company's financial condition and rating.

History: Effective April 1, 1992.  
General Authority: NDCC 6-01-04  
Law Implemented: NDCC 6-03-02

13-02-14-05. Documentation. In purchasing life insurance for executive officers or directors, the bank's board of directors must adequately document in its minutes the basis for its insurable interest and the basis for the amount of insurance. The bank's board of directors must also document in its minutes the basis for determining how that officer meets the definition of an executive officer. In purchasing life insurance in connection with employee compensation and benefit plans and deferred directors fees programs, the bank's board of directors must approve and document such plans or programs including the reasonableness of the plans or programs.

History: Effective April 1, 1992.  
General Authority: NDCC 6-01-04  
Law Implemented: NDCC 6-03-02

13-02-14-06. Waiver. The state banking board or commissioner may waive any limitation in this chapter as to policies purchased before the effective date of this chapter. The state banking board may permit the bank to continue to hold a life insurance policy on an employee covered by a compensation and benefit plan who terminates or retires from employment of the bank.

History: Effective April 1, 1992.

General Authority: NDCC 6-01-04  
Law Implemented: NDCC 6-03-02, 6-03-38



TITLE 20  
Dental Examiners, Board of



FEBRUARY 1992

20-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "Basic full upper and lower denture" means ~~the~~ replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. ~~Some materials~~ Materials used in these replacements ~~shall~~ must be nonirritating in character and meet all the standards set by the national institute of health, and the bureau of standards and ~~the~~ testing agencies of the American dental association for materials to be used in or in contact with the human body.
2. "Coronal polishing" is the mechanical polishing of clinical crowns using a rotary instrument and a rubber cup or brush only and not to include any instrumentation. Examination for calculus and instrumentation must be done by the dentist or hygienist.
3. "Dental assistant" means a person who functions in an auxiliary capacity and to whom a legally licensed and registered dentist may delegate certain procedures over which the dentist exercises the direct supervision and under the direct supervision of a licensed dentist, except as expressly authorized by the board under subsection 2 of North Dakota Century Code section 43-20-12, to whom may be delegated certain procedures over which the dentist exercises full responsibility, except those procedures which require professional judgment and skill such as diagnosis and treatment planning, cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of any appliance which, when worn by a patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury.



3. 4. "Dental hygienist" means any person who is a graduate of a school or of dental hygiene approved or provisionally approved by the council on education of the American dental association and who is registered and licensed by the North Dakota state board of dental examiners.
4. "Diagnosis" means a written opinion of items found in an examination.
5. "Examination" means the study of all the structures of the oral cavity, including the recording of the condition of all such structures and an appropriate history thereof. As a minimum, the study shall include charting of carries, identification of periodontal disease, occlusal discrepancies, and the detection of oral lesions.
6. "Prophylaxis" means the removal of all calculous deposits, accretions, and stains from exposed surfaces of the teeth and from gingival sulcus.
7. "Radiograph" means x-rays of the hard and soft oral structures to be used for purposes of diagnosis and which includes either panograph and bite wings or an intraoral x-ray review utilizing a minimum of twelve films. Any films must be adequate to provide an appropriate radiographic study of both dental arches.
8. "Simple extractions" means the removal of nonimpacted teeth and includes necessary x-rays, anaesthesia, preoperative care, and postoperative care.
9. "Treatment planning" means a written statement of treatment recommendations following an examination and diagnosis. The statement shall include a written itemized treatment recommendation and written itemized fee statement.
5. "Direct supervision" means the dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and, before dismissal of the patient, personally evaluates the performance of the auxiliary.
6. "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis and treatment plan. The dentist is not required to be in the treatment facility.
7. "Indirect supervision" means the dentist is in the office, authorizes the procedures, and remains in the office while the procedures are being performed by the auxiliary.

History: Effective September 1, 1980; amended effective February 1, 1992.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-20-02, 43-20-12, 43-28-06

20-02-01-01. Advertising.

1. Advertising by dentists is permitted ~~in order~~ to disseminate information for the purpose of providing the public a sufficient basis upon which to make an informed selection of dentists. In the interest of protecting the public health, safety, and welfare, advertising which is false and, deceptive, or misleading ~~and which does not contribute the process of rational selection of dentists~~ is prohibited.
2. Advertising by dentists in the media is limited to advertising in newspapers in general circulation in the community in which the dentist maintains an office. Advertising on radio or television is limited to those radio or television stations located in the community in which the dentist maintains an office, or which are the prime server in the community in which the dentist maintains an office. No advertising in other media is permitted.
3. All advertising in any media must contain a name, address, and telephone number of the dentist, and the dentist's name means the use of the full name of the dentist as it appears on the dentist's license and renewal certificate.
4. In addition to the above, advertising by dentists in any media may contain the following information:
  - a. A dentist engaged in general practice who wishes to announce the services available in the dentist's practice is permitted to announce the availability of those services so long as the dentist avoids using phrases that express or imply specialization. The dentist shall also state that the services are being provided by a dentist in general practice. The phrase "practice limited to" shall be avoided.
  - b. A dentist who has a specialized practice may announce the dentist's specialization and limitation of practice provided that the dentist has successfully completed an educational program accredited by the commission accreditation of dental and dental auxiliary education programs, two or more years in length, as specified by the council on dental education of the American dental association, or be a diplomat of national recognized certifying board, and, the dentist's practice is limited exclusively to the special area of dental practice in which the dentist has or wishes to announce.
  - c. Office hours.



- d. Fees charged for routing dental services as delineated in subsection 8. If the fees are contained in an advertisement, then the advertisement shall include a disclosing statement which states that the fee advertised is the minimum fee charged for these services and that the actual fee may vary depending upon the degree of complexity involved in a given case. Such disclosing statement shall be no less prominent in context of the advertisement than the fee information in the advertisement. If the fee statement is verbal, then a disclosing statement shall also be verbal and be of equal volume, quality, and duration as the fee statement. If the fee statement is written, then the disclosing statement shall be written and must be of equal size, intensity, and duration as the fee statement.
- 5. Advertising on radio or television may contain a person narrating the advertisement. In the case of advertisements on television, only the advertising dentist may appear and speak on camera. If the person narrating a radio or television advertisement represents oneself as a dentist, then the person must be the dentist represented.
- 6. No advertisement on radio or television shall use any celebrity or authority figure, nor shall advertising contain direct or implied guarantees or testimonials from patients or other persons.
- 7. A prerecorded copy of all advertisements on radio or television must be retained for a one-year period following the final appearance of the advertisement. The advertising dentist is responsible for retaining control of the advertisement for a period of one year following termination of the use of the advertisement and is responsible to make prerecorded copies of the advertisement available to the state board of dental examiners within five days following a request by the board.
- 8. Advertising of fees pursuant to subdivision d of subsection 4 is limited to the following routine dental services:
  - a. Examination.
  - b. Diagnosis.
  - c. Treatment planning.
  - d. Radiograph.
  - e. Basic full upper and lower denture.
  - f. Prophylaxis.

- g. ~~Simple extractions.~~
  - h. ~~Any and all other services which may from time to time be approved by the board of dental examiners.~~
9. ~~No dentist shall knowingly hold oneself, one's staff, one's services, or method of delivery of dental services to be superior to those of any other licensed dentist or legally recognized method of dentistry. This prohibition applies to media exposure of any nature regardless of whether it is in the form of paid advertising. No advertising in any media shall contain representations or other information contrary to the provisions of North Dakota Century Code section 43-28-18 or this section.~~

All advertising must contain the legal name of the dentist, or a reasonable variation thereof. In the case of a partnership or corporation, the name used in the advertisement may be the true name of the partnership or corporation. The advertisement must also contain the location, or locations, of the dentist, partnership, or corporation.

3. A dentist engaged in general practice who wishes to announce the services available in the dentist's practice is permitted to announce the availability of those services as long as the dentist avoids using language that expresses or implies that the dentist is a specialist. If a dentist, other than a specialist, wishes to advertise a limitation of practice, such advertisement must state that the limited practice is being conducted by a general dentist. A dentist who is a specialist may announce the dentist's specialization provided that the dentist has successfully completed an educational program accredited by the commission on accreditation of dental and dental auxiliary educational programs, two or more years in length, as specified by the council on dental education of the American dental association or be a diplomate of a nationally recognized certifying board. Such a dentist may announce that his practice is limited to the special area of dental practice in which the dentist has or wishes to announce.
4. A dentist who advertises on radio or television must retain a recorded copy of such advertising for a period of one year following the termination of the use of such advertising, and is responsible to make recorded copies of such advertising available to the North Dakota state board of dental examiners within thirty days following a request from the board for such copies.
5. No dentist may advertise the dentist, the dentist's staff, the dentist's services, or the dentist's method or methods of delivery of dental services to be superior to those of any other licensed dentist, unless such claim or claims can be

substantiated by the advertiser, upon whom rests the burden of proof.

6. No advertising by a dentist may contain representations or other information contrary to the provisions of North Dakota Century Code section 43-28-18 or North Dakota Administrative Code title 20.

History: Effective September 1, 1980; amended effective February 1, 1992.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-02. Office emergency. Every dentist or dental hygienist licensed to practice in North Dakota must have a certificate of proficiency in cardiopulmonary resuscitation.

History: Effective February 1, 1992.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-03. Nitrous oxide. A duly licensed dentist may use nitrous oxide for treating patients only when the following conditions are met:

1. Documentation has been provided by the dentist to the board that verifies completion of sixteen hours of instruction or continuing professional education dealing specifically with the use of nitrous oxide. In the absence of documentation of classroom training, the dentist must provide proof acceptable to the board that demonstrates three years of practical experience in the use of nitrous oxide.
2. A dentist who induces a patient into a state of psychosedation or relative analgesia using nitrous oxide shall ensure that the patient will be continually and personally monitored by a dentist. A dentist may delegate the monitoring tasks to a licensed dental hygienist or a certified dental assistant only after the patient has been stabilized at the desired level of conscious sedation or relative analgesia by the action of the dentist. The licensed dental hygienist or certified dental assistant who is assigned the monitoring task shall remain in the treatment room with the patient at all times. A dental hygienist or a dental assistant may not initiate the administration of nitrous oxide to a patient.
3. The dentist must provide and document training for the dental hygienist or certified dental assistant in the proper and safe operation of the analgesia machine being used, including the emergency procedures to be employed if required.



History: Effective February 1, 1992.  
General Authority: NDCC 43-28-06  
Law Implemented: NDCC 43-28-06

20-02-01-04. Temporary license to practice dentistry. The board may grant a nonrenewable temporary license to practice dentistry in the state of North Dakota for a period not to exceed one year. The temporary license will be issued only for special purposes that are unique and cannot be satisfied by the normal means to licensure.

1. The primary objective for issuing a temporary license is to facilitate the maintenance of professional care for patients when the attending dentist is suddenly incapacitated, disabled, or dies.
2. A temporary license to practice dentistry in North Dakota may be granted to a dentist when the following conditions are met:
  - a. Applied to the board in the prescribed manner and payment of the fee determined by the board.
  - b. Successfully completed the written national board dental examinations.
  - c. Is already licensed to practice dentistry in another state.
  - d. Has provided a statement from the licensing authority of all the states in which the dentist is licensed that his license is unencumbered, unrestricted, and that his professional record is free of blemish for professional misconduct, substandard care, or violations of the state's practice act.
  - e. Has certified that no disciplinary actions are pending in other states or jurisdictions.
  - f. Has authorized the board to seek information concerning his professional and personal background and agrees to hold harmless those individuals who may provide such information to the board.
3. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the temporary license.
4. The board may restrict the licensee to engage in dental practice, as may be limited above only at certain and specifically defined practice locations.

History: Effective February 1, 1992.  
General Authority: NDCC 43-28-06

20-03-01-01. Duties. A dental assistant who is under the direct supervision of a licensed dentist may perform the following duties: may perform the services listed in subsections 1 through 6 under direct supervision, direction, and responsibility of a licensed dentist. A dental assistant may perform the duties set forth in subsections 7 through 23 only if the dental assistant is a certified dental assistant, the dental assistant has a certificate of successful completion of a course in dental assisting from a school recognized by the American dental association, or the dental assistant has successfully completed a course approved by the North Dakota board of dental examiners.

1. ~~Take dental x-rays only if the assistant is a certified dental assistant, or has a certificate of successful completion of a course in dental assisting from a school recognized by the American dental association, or has successfully completed a course in roentgenology approved by the board.~~
2. ~~Instruct patients in toothbrushing and flossing and other methods of oral hygiene.~~
3. ~~Take and record pulse, blood pressure, and temperature.~~
4. 2. Take and record preliminary dental and medical history for the interpretation by the dentist.
5. 3. Apply topical applications of medications and drugs prescribed by the dentist except to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
6. ~~Apply anticariogenic agents topically after an oral prophylaxis by a dentist or dental hygienist.~~
7. ~~Receive removable dental prosthesis for cleaning or repair.~~
8. ~~Take impression for study casts.~~
9. ~~Remove sutures.~~
10. ~~Place rubber dams.~~
11. ~~Remove rubber dams.~~
12. ~~Remove excess supragingival cement from coronal surfaces of teeth with hand instruments only.~~
13. ~~Remove arch wires.~~
14. ~~Tie in arch wires with elastic ligatures.~~



- ~~15. Hold impression trays in mouth.~~
- ~~16. Preselect orthodontic band.~~
- ~~17. Monitor a patient who has been inducted by a dentist into nitrosoxide relative analgesia.~~
4. Receive removable dental prosthesis for cleaning or repair.
5. Take impressions for study casts.
6. Hold impression trays in the mouth (e.g. reversible hydrocolloids, rubber base).
7. Take dental radiographs.
8. Remove sutures.
9. Apply anticariogenic agents topically.
10. Place and remove rubber dams.
11. Remove excess supragingival cement from coronal surfaces of teeth with hand instruments only.
12. Place and remove orthodontic wires or appliances that have been activated by the dentist.
13. Tie ligature wires or elastic ties.
14. Preselect and prefit orthodontic bands.
15. Fabricate, place, and remove a temporary crown or onlay. This applies only to a tooth or teeth actively under treatment for which a permanent restoration is being fabricated.
16. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
17. Place and remove periodontal dressings.
18. Place orthodontic elastic-type separators.
19. Remove ligature wires or elastic ties, or both.
20. Remove arch wires.
21. Perform nonsurgical clinical and laboratory oral diagnosis tests for interpretation by the dentist.
22. Polish the coronal surfaces of the teeth with a rubber cup or brush only after necessary scaling by a hygienist or dentist.

23. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.

History: Effective September 1, 1980; amended effective February 1, 1992.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-12

20-03-01-02. Prohibited services. A dental assistant may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administering of local or general anesthetics.
4. Any irreversible dental procedure or procedures which require the professional judgement and skill of a licensed dentist.
5. Placing or contouring of a final restoration.
6. Any intraoral procedure which would lead to the fabrication of any appliance.
7. Activating any type of orthodontic appliance.
8. Cementing or removing orthodontic bands.
9. Direct bonding or removal of orthodontic brackets.
10. Apply pit and fissure sealants.
11. Place or remove matrix bands.
12. Placing bases or cavity liners.
13. Scaling, root planing, or gingival curettage.
14. Measuring the gingival sulcus with a periodontal probe.

History: Effective February 1, 1992.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-12

20-04-01-01. Duties. In addition to those duties outlined in North Dakota Century Code section ~~43-20-03~~, dental hygienists who have been registered and licensed by the board and who are under the direct supervision of a licensed dentist may perform the following duties: A

dental hygienist may perform the following services under the indirect supervision, direction, and responsibility of a licensed dentist.

1. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surface surfaces of exposed teeth. The dental hygienist may also do root planing and soft tissue curettage upon direct order of the dentist.
2. Polish and smooth existing restorations.
3. Apply topical applications of drugs to the surface tissues of the mouth and to exposed surfaces of the teeth.
4. Take ~~dental x-rays~~ impressions for study casts.
5. Take and record preliminary medical and dental histories for the interpretation by the dentist.
6. Take and record pulse, blood pressure, and temperature.
7. ~~Chart the mouth~~ Take dental radiographs.
8. ~~Instruct the patient in brushing and flossing and other oral hygiene matters~~ Hold impression trays in the mouth (e.g. reversible hydrocolloids, rubber base, etc.).
9. Receive removable dental prosthesis for cleaning and repair.
- ~~+0- Insert cleaned or repaired removable prostheses when directed by the dentist.~~
- ~~+1- Place and remove celluloid or plastic strips between teeth for placement of filling by the dentist.~~
- ~~+2- Remove ligature ties.~~
- ~~+3- Remove rubber dam.~~
- ~~+4- Remove sutures on direct order of the dentist.~~
- ~~+5- Remove periodontal packs and other surgical dressings on direct order of the dentist.~~
- ~~+6- Perform nonsurgical clinical and laboratory oral diagnosis tests for interpretation by the dentist.~~
- ~~+7- Assist the dentist in the administration of general anaesthesia or analgesia.~~
- ~~+8- Take impressions for study casts.~~
- ~~+9- Place rubber dams.~~



- ~~20. Place temporary restorations when so ordered by the dentist.~~
- ~~21. Remove cement from around orthodontic bands.~~
- ~~22. Preset and select orthodontic bands.~~
- ~~23. Remove arch wire.~~
- ~~24. Tie in arch wire with elastic type ligatures.~~
10. Remove sutures.
11. Apply anticariogenic agents topically.
12. Place and remove rubber dams.
13. Place and remove orthodontic wires or appliances, or both, that have been activated by the dentist.
14. Tie ligature wires or elastic ties, or both.
15. Preselect and prefit orthodontic bands.
16. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
17. Fabricate, place, and remove a temporary crown or onlay. This applies only to a tooth or teeth actively under treatment for which a permanent restoration is being fabricated.
18. Place and remove periodontal dressings.
19. Place orthodontic elastic-type separators.
20. Remove ligature wires or elastic ties, or both.
21. Remove arch wires.
22. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.
23. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.
24. Apply etching solutions to teeth and etch enamel and place pit and fissure sealants. When a dentist delegates this task to a dental hygienist, the application of the sealant must, without exception, be done as a four-handed procedure from the time the etchant is placed on the tooth until the sealant is cured.
25. A dentist or program manager, supervising federal-sponsored or state-sponsored public health dental hygiene programs, may

petition the state board of dental examiners for a specific exemption to the requirement for four-handed application of pit and fissure sealants by dental hygienists.

26. A dental hygienist may practice under general supervision in a federal or state dental public health setting when a supervisory dentist has examined the patient and has evaluated the patient's dental health plan and has issued to a licensed dental hygienist specific written orders for the prescribed treatment. The dentist or program manager operating federal-sponsored or state-sponsored dental public health clinics shall obtain from the state board of dental examiners the specific written authority to utilize general supervision of dental hygienists.

History: Effective September 1, 1980; amended effective February 1, 1992.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03

20-04-01-02. Prohibited services. A dental hygienist may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administering of local or general anesthetics.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
5. Placing or contouring of a final restoration.
6. Any intraoral procedure which would lead to the fabrication of any appliance.
7. Activating any type of orthodontic appliance.
8. Cementing or removing orthodontic bands.
9. Direct bonding or removal of orthodontic brackets.
10. Place or remove matrix bands.
11. Placing bases or cavity liners.

History: Effective February 1, 1992.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03





MAY 1992

STAFF COMMENT: Article 20-05 contains all new material but is not underscored so as to improve readability.

ARTICLE 20-05

FEES

Chapter  
20-05-01 Fees

CHAPTER 20-05-01  
FEES

Section  
20-05-01-01 Fees

20-05-01-01. Fees. The following fees apply to the services listed:

1. The nonrefundable fee to process an application for a license to practice for an applicant who has completed a clinical board examination within the time period allowed by the state board of dental examiners is two hundred dollars for a dentist and fifty-five dollars for a dental hygienist.
2. The nonrefundable fee to process an application for a license by a review of the applicant's professional credentials without additional clinical examination is four hundred fifty

dollars for a dentist and one hundred sixty-five dollars for a dental hygienist.

3. The nonrefundable fee to process an application for a temporary license to practice dentistry is four hundred fifty dollars.
4. The certificate of registration annual renewal fee is ninety dollars for a dentist and forty-five dollars for a dental hygienist.
5. The penalty for late renewal of annual certificate of registration is one hundred dollars for dentists and dental hygienists in addition to the fee specified above for renewal.
6. The fee to replace or provide a duplicate copy of a dental or dental hygiene license is twenty-five dollars.
7. The fee to reactivate a retired dental or dental hygiene license is the sum of each year's annual renewal fee since the license was retired plus one hundred dollars.

History: Effective May 1, 1992.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-27

TITLE 27  
Job Service North Dakota



MAY 1992

27-02-14-01. Employment defined.

1. Subdivision a of subsection 17 of North Dakota Century Code section 52-01-01 contains three separate and independent tests for determining if the service is employment.
2. ~~Paragraph 1 of subdivision a of subsection 17 of North Dakota Century Code section 52-01-01~~ The first test relates to the test for determining whether the service of an officer of a corporation is employment with respect to service performed for the corporation. ~~Paragraph 2 of subdivision a of subsection 17 of North Dakota Century Code section 52-01-01~~ That test is found in paragraph 1 of subdivision a of subsection 17 of North Dakota Century Code section 52-01-01. The second test relates to the test for determining whether an individual's service is employment with regard to the test provided for in subdivision e of subsection 17 of North Dakota Century Code section 52-01-01. ~~Paragraph 3 of subdivision a of subsection 17 of North Dakota Century Code section 52-01-01~~ That test is found in paragraph 2 of subdivision a of subsection 17 of North Dakota Century Code section 52-01-01. The third test relates to the test for determining if an individual's service in certain occupational groups is employment if such service is not employment under the test. That test is found in paragraph 3 of subdivision a of subsection 17 of North Dakota Century Code section 52-01-01. If an individual's service is employment under any one of these tests, it is to be considered employment for purposes of this section.
3. If the service is employment under one of the tests in subsection 2, the designation or description of the relationship by the parties as anything other than that of employment or of employer and employee is immaterial.



4. Generally, an officer of a corporation is an employee of the corporation and the service performed for the corporation is employment. However, an officer of a corporation who does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not an employee of the corporation. A director of a corporation, in the director's capacity as such, is not an employee and such service is not employment.
5. Any service performed for another for wages or under any contract of hire is deemed to be employment unless it is shown that all three of the following tests are met: the individual performing the service is an independent contractor as determined by the "common law" test.

- a. The firm or person for whom the services are being performed does not have the right to direct or control the worker's performance.

The service is considered employment when the firm for whom the services are performed has the right to control or direct the individual performing the services not only as to the result to be accomplished but also as to the details and the means by which the work is accomplished. In connection with this test, it is not necessary that the firm actually exercise direction or control. The test fails if the firm has the right to do so.

The right of the firm to discharge a worker without incurring a contractual liability is a strong indicator of the right to control, particularly if the arrangement contemplates continuing or reoccurring work.

- b. The service performed must be outside the usual course of business or outside all places of business of the firm for which the services are performed.

The service must not be directly related to the principal business activity of the firm or the service must be performed outside of the firm's places of business. The firm's places of business are not limited to its building or premises, but may include the customer's premises or geographical areas where the firm normally performs its services.

- c. The individual performing the service must be customarily engaged in an independently established trade, occupation, profession, or business.

The individual performing the service must do so as a part of a business established independently of the

relationship with the firm for whom the services are being performed.

Indicators of independence are a significant investment by the worker in facilities used in performance of the service. The possibility of a profit or loss as a result of the service. Working for a number of persons at the same time, the hiring of assistants, and the availability of the services to the general public are also indicators. In this connection, it is not sufficient that a worker be free to engage in such activities, the worker must actually be so engaged.

- a. Generally, an employment relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what must be done but how it must be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. However, the right to terminate a contract before completion to prevent and minimize damages for a potential breach or actual breach of contract does not, by itself, suggest an employment relationship. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. The fact that the contract must be performed at a specific location, such as a building site, does not, by itself, constitute furnishing a place to work if the nature of the work to be done precludes a separate site or is the customary practice in the industry. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, the individual is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.
- b. As an aid to determining whether an individual is an employee under the common law rules, twenty factors or



elements have been identified as indicating whether sufficient control is present to establish an employer-employee relationship. These twenty factors have been developed based on an examination of cases and rulings considering whether an individual is an employee. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed. These twenty factors are designed only as guides for determining whether an individual is an employee; special scrutiny is required in applying these twenty factors to assure that formalistic aspects of an arrangement designed to achieve a particular status do not obscure the substance of the arrangement; that is, whether the person or persons for whom the services are performed exercise sufficient control over the individual for the individual to be classified as an employee. These twenty factors are described below:

- (1) Instructions. A person who is required to comply with other persons' instructions about when, where, and how the person is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions.
- (2) Training. Training a person by requiring an experienced employee to work with the person, by corresponding with the person, by requiring the person to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner.
- (3) Integration. Integration of the person's services into the business operations generally shows that the person is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the persons who perform those services must necessarily be subject to a certain amount of control by the owner of the business.
- (4) Services rendered personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.
- (5) Hiring, supervising, and paying assistants. If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the persons on the job.



However, if one person hires, supervises, and pays the other assistants pursuant to a contract under which the person agrees to provide materials and labor and under which the person is responsible only for the attainment of a result, this factor indicates an independent contractor status.

- (6) Continuing relationship. A continuing relationship between the person and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.
- (7) Set hours of work. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control.
- (8) Full time required. If the person must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the person spends working and impliedly restrict the person from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.
- (9) Doing work on the premises of the person or persons for whom the services are performed. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the person, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the person is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.
- (10) Order or sequence set. If a person must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the person is not free to follow the person's own pattern of work but must follow the

established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.

- (11) Oral or written reports. A requirement that the person submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. By contract, however, parties can agree that services are to be performed by certain dates and the persons performing those services can be required to report as to the status of the services being performed so that the person for whom the services are being performed can coordinate other contracts that person may have which are required in the successful total completion of a particular project.
- (12) Payment by hour, week, month. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.
- (13) Payment of business or traveling expenses, or both. If the person or persons for whom the services are performed ordinarily pay the person's business or traveling expenses, or both, the person is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the person's business activities.
- (14) Furnishing of tools and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.
- (15) Significant investment. If the person invests in facilities that are used by the person in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the person is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the



person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship.

- (16) Realization of profit or loss. A person who can realize a profit or suffer a loss as a result of the person's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the person who cannot is an employee. For example, if the person is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the person is an independent contractor. The risk that a person will not receive payment for his or her services, however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.
- (17) Working for more than one firm at a time. If a person performs services under multiple contracts for unrelated persons or firms at the same time, that factor generally indicates that the person is an independent contractor. However, a person who performs services for more than one person may be an employee for each of the persons, especially where such persons are part of the same service arrangement.
- (18) Making service available to general public. The fact that a person makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.
- (19) Right to discharge. The right to discharge a person is a factor indicating that the person is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the person to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.
- (20) Right to terminate. If the person has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. A contract can be terminated by the mutual agreement of the parties before its completion or by one of the parties to the contract before its completion to

prevent a further breach of the contract or to minimize damages. This situation indicates an independent contractor relationship.

6. In addition to service which is employment under paragraphs 1 and 2 of subdivision a of subsection 17 of North Dakota Century Code section 52-01-01, other service is employment if it is performed under certain circumstances in the following occupational groups:
  - a. As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry cleaning services, for his principal.
  - b. As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

The fact that the service falls within one of the enumerated occupational groups, however, does not make such service employment under this subsection unless the contract of service contemplates that substantially all of the services are to be performed personally by such individual; the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

History: Effective January 1, 1991; amended effective May 1, 1992.

General Authority: NDCC 52-02-02

Law Implemented: NDCC 52-01-01(17)



TITLE 33

Health and Consolidated Laboratories, Department of



FEBRUARY 1992

33-03-11-01. Definitions. Words defined in North Dakota Century Code chapter 43-38 have the same meaning in this chapter, and in addition:

1. "Initial license" means the first license.
2. ~~"Instructor" means a person who has successfully completed a course in electrolysis from an electrolysis school, who has at least three years practice in the field of electrolysis, who is knowledgeable in the art of electrolysis, capable of imparting such knowledge to another person, and such person actually instructs, is employed to instruct, or otherwise is involved in instruction.~~
- ~~3.~~ "Person" means an individual human being.
- ~~4.~~ 3. "Relicensure" means any license issued after the initial license.
- ~~5.~~ 4. "State health officer" means the state health officer of the North Dakota state department of health and consolidated laboratories as defined in North Dakota Century Code title 23.

History: Effective September 25, 1979; amended effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-01

33-03-11-02. License required - Fees.

1. A person may not hold oneself out to the public as ~~an electrologist or~~ an electronic hair removal technician without a license issued by the state health council.



2. A license may not be sold, assigned, or transferred.
3. The license shall expire midnight on December thirty-first of the year issued. License renewal shall be on a calendar year basis renewable on January first of each year.
4. The license shall be displayed in a conspicuous place easily viewable by the persons treated.
5. The license fee shall be thirty dollars each for an initial license for the first year or part of a year.
6. The relicensure fee shall be twenty-five dollars each per year or part of a year.
7. Licenses will be issued and license fees will be collected on a calendar year basis. License fees will not be prorated for a partial year.

History: Effective September 25, 1979; amended effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-04

33-03-11-05. Minimum standards for licensure.

1. An applicant for licensure must meet the minimum standards prescribed by this subsection.
  - a. The applicant must be at least eighteen years of age.
  - b. The applicant must have a general education equivalent to the completion of four years in high school.
  - c. ~~An electrologist not licensed on July 1, 1979, by the North Dakota board of hairdressers and cosmetologists must document successful completion of an electrolysis course from an electrolysis school which meets the minimum standards of curriculum as set forth in section 33-03-11-08. An application for an initial electrologist license must be accompanied with letters of recommendation for an electrologist license from two instructors or two physicians knowledgeable about the applicant's work product.~~
  - d. An electronic hair removal technician must have successfully completed a course in an electrolysis school which meets the minimum standards as set forth in section 33-03-11-08 in electronic hair removal in the technique of removing hair other than through the use of the electric needle. The applicant must provide one letter of recommendation for the issuance of a technician license



from one instructor knowledgeable in the electronic hair removal process without the use of an electric needle.

- ~~e.~~ d. The licensee must at all times employ sanitary and disease control practices acceptable to the state health council. Written effective procedures for aseptic techniques must be available and followed by the licensee.
- 2. ~~Electrologists and electronic~~ Electronic hair removal technicians practicing or holding a license to practice from the North Dakota board of hairdressers and cosmetologists on June 30, 1979, will be deemed qualified and will be issued their licenses upon certification from the board as to the existence of such licenses. All other applicants for a license must document their qualifications for licensure in accordance with this section.
- 3. ~~A licensed electrologist is permitted to use the electric needle and to practice the art of removal of hair by any method other than the use of the electric needle.~~
- ~~4.~~ A licensed electronic hair removal technician is not permitted to remove hair with the use of the electric needle, but is permitted to practice any other method of hair removal.

History: Effective September 25, 1979; amended effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11-07. State health officer - Administration of program. The state health officer shall administer the ~~electrolysis~~ licensing program in North Dakota. Pursuant to subsection 5 of North Dakota Century Code section 43-38-03, it is the intent of the state health council to set program policy through the promulgation of regulations as charged in the statute and to vest all other administrative powers in the state health officer.

History: Effective September 25, 1979; amended effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 23-01-05, 43-38-03

#### 33-03-11-08. Recognition of curriculum.

1. The state health council will recognize an applicant for a license as eligible for a license when the applicant has graduated from ~~an electrolysis~~ school which has provided at a minimum the following curriculum taught by instructors:

a. Subject

Hours

- (1) Practical training in the following branches of electrolysis: 200

Sanitation and sterilization  
as applied to electrology

Patron protection

Use of the electrical currents

Use of equipment and instruments

~~Insertion of needles (single and  
multiple). (Not required for  
electronic hair removal  
technicians.)~~

Precautionary measures to observe  
before and after treatment

Immediate aftercare

Home care (patron instruction  
in home care)

Destruction of the papilla

Observation (demonstration and  
result of work)

Note: At least two-thirds of the hours  
in this subject shall be in  
actual performance of services  
on another person.

- (2) Theoretical and practical training  
in the following:

Ethics, professional conduct 15

Optional and unassigned hours 10

- (3) Theory covering the following subjects: 75

Sanitation and sterilization  
as applied to electrology

Electricity

~~Electrology (not required for  
electronic hair removal technicians)~~

Thermology (not required for  
electronic hair removal technicians)

Dermatology

Trichology

Bacteriology

Study of the peripheral  
vascular system (capillaries)

Study of the sensory nervous  
system (nerve endings)

Hygiene

Provisions of the electrolysis law  
and regulations pertinent to the  
practice of electrology.

Total electrologist hours required 300

Total electronic hair removal technician  
hours required is three hundred less the  
number of hours not required in  
electrology, thermology, and the  
insertion of needles.

2. Students enrolled in an electrolysis school in North Dakota are prohibited to do practical work on patrons outside of school premises. Practical work may be done by students within the school premises and under the direct supervision of a licensed electrologist an instructor.
3. An instructor in electrolysis in any electrolysis school in North Dakota is subject to the licensure provisions of this chapter.
4. All electrolysis schools in North Dakota are to post a sign with letters at least four inches [10.16 centimeters] tall conspicuously placed to be seen by the school's patrons as follows:

All electrolysis work in this school is performed by students under the direct supervision of a licensed electrologist. You will only be charged a reasonable fee to cover expenses of equipment and materials used.

- 5- 4. Cosmetology schools in North Dakota teaching the theory of electrolysis to their cosmetology students as part of the cosmetology curriculum are exempt from the provisions of this chapter. However, such instructions on electrolysis in a

cosmetology school will not be credited toward the number of hours required in an electrolysis school for licensure purposes.

History: Effective September 25, 1979; amended effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

STAFF COMMENT: Chapter 33-03-11.1 contains all new material but is not underscored so as to improve readability.

#### CHAPTER 33-03-11.1 ELECTROLYSIS

##### Section

33-03-11.1-01	Definitions
33-03-11.1-02	License Required - Fees
33-03-11.1-03	Application for Licensure
33-03-11.1-04	Applications for Licensure and Grandfathering Provision
33-03-11.1-05	Electrologist Licensure Examination
33-03-11.1-06	Notification of Examination Date, and Results
33-03-11.1-07	Retake of Examination Sections
33-03-11.1-08	Issuance, Renewal, and Reactivation of a License
33-03-11.1-09	Continuing Education
33-03-11.1-10	Infection Control and Safety
33-03-11.1-11	Location of Business
33-03-11.1-12	Equipment
33-03-11.1-13	Restrictions to Practice
33-03-11.1-14	Client Records
33-03-11.1-15	Complaints
33-03-11.1-16	Penalties for Infraction of This Chapter
33-03-11.1-17	Approved Training Curriculum

##### 33-03-11.1-01. Definitions.

1. "Approved" means determined acceptable in writing, by the department.
2. "Department" means the department of health and consolidated laboratories.
3. "Electrologist" means a person proficient in the permanent removal of hair by electrolysis and who is currently licensed by the department to practice in North Dakota.
4. "Electrolysis" means the method of removing hair from the human body by application of an electrical current to the hair-papilla by means of a probe to cause decomposition,



coagulation, or dehydration of the hair-papilla and thus permanently remove the hair.

5. "Electrology-related" means workshops, home study courses approved by the international board of electrologist certification or the American electrology association, or workshops sponsored by hospitals or other health care agencies specific to infection control or the hands-on practice of electrology that have been completed by licensed electrologists to obtain necessary continuing education hours for licensure.
6. "Facility" means physical place of business and includes all areas used by the electrologist and patients during business hours, including, but not limited to, the treatment rooms and waiting and reception areas.
7. "Grandfather provision" means the one-time opportunity for licensure without examination under the specific provisions of this chapter.
3. "Initial license" means the first license.
9. "Instruments" means probes, forceps, hemotstats, tweezers, or other equipment required for the actual hair removal process.
10. "Official transcript" means document certified by an approved school indicating hours and types of coursework, examinations, and scores.
11. "Probe" means the needle or filament used to administer the electric current to the hair-papilla to permanently remove hair.
12. "Provisional" means license granted based on conditions as established specifically by the department in response to the licensure noncompliance issues found to be present or have been present on a recurring basis during the past twenty-four-month period related to the practice or facility of an individual electrologist or electrology business.
13. "Relicensure" means any license issued after the initial license.
14. "Renew" means to extend a current license for one year if compliance with licensure rules has been maintained.
15. "Violation of licensure requirement" means noncompliance with requirements of this chapter.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-01

33-03-11.1-02. License required - Fees.

1. The state health council delegates to the state health officer the authority to manage and implement the electrology licensure program.
2. A person may not hold themselves out to the public as an electrologist without a current license issued by the department.
3. A license may not be sold, assigned, or transferred.
4. The license expires at midnight on December thirty-first of the year issued. Licensure renewal must be on a calendar year basis renewable on January first of each year.
5. The license must be displayed in a place easily viewable by clients and the public.
6. Electrologist licenses must be issued by the department. The license fee is fifty dollars annually for new licenses.
7. The license renewal fee is twenty-five dollars per year. Licenses will be issued and license fees will be collected on a calendar year basis and will not be prorated for a partial year.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-02, 43-38-03

33-03-11.1-03. Application for licensure. Application for a license must be made to the department on forms prescribed by the department and must be accompanied by:

1. The first year license fee.
2. Proof of age of at least eighteen and identity such as driver's license or birth certificate, and a copy of a high school diploma, or equivalency examination, or degree from an accredited institution of higher education.
3. Official transcript from an electrology school meeting the requirements for training as defined in section 33-03-11.1-17 or results of having satisfactorily completed an approved electrology licensure examination.
4. Electrologists not licensed by January 1, 1992, by the department must document successful completion of an electrology course from an electrology school which at least meets the standards set forth in section 33-03-11-08 or

successfully complete a department-approved electrology licensure examination.

5. A licensed electrologist must practice permanent hair removal through the use of a probe.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-02, 43-38-03

#### 33-03-11.1-04. Applications for licensure and grandfathering provision.

1. Applicants who fail to complete the application process and obtain a license from the department prior to January 1, 1992, will be required to meet the standards in this chapter.
2. Electrologists holding current licenses with the department as of January 1, 1992, will be considered to be eligible for ongoing licensure with the department, provided the individual continues to actively practice electrology and provides the department with evidence of required continuing education hours.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

#### 33-03-11.1-05. Electrologist licensure examination.

1. Persons applying for licensure as an electrologist in North Dakota may either satisfactorily complete the licensure examination or provide to the department documentation of satisfactory completion of a school meeting the criteria described in section 33-03-11.1-11.
2. The applicant for examination for electrology licensure shall notify the department regarding scheduling of the examination.
3. The examination will consist of a nationally accepted, legally defensible, standardized written test and a practical skills demonstration component. In addition, the examination must consist of a test mechanism that has been developed from a pool of test questions to ensure that more than one form of the written test is available for administration.
4. The practical skills demonstration portion of the examination must consist of actual facial hair removal proctored by a currently licensed electrologist. The hair removal must be performed on an individual provided by the examinee.

5. Both the written and practical skills portion of the examination must be performed without assistance of manuals, notes, books, or any other additional materials or persons. The practical skills component of the examination must be proctored by a licensed electrologist.
6. Examinees must achieve a passing score on each component of the examination to be considered eligible for state licensure as an electrologist.
7. Examinations meeting this criteria must be submitted for review and approval by the department prior to being acceptable as a mechanism for licensure as an electrologist in North Dakota.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11.1-06. Notification of examination date, and results. After completion and scoring of an approved test with results forwarded to the department, the department will notify the examinee in writing of the test scores and the examinee's eligibility for licensure.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11.1-07. Retake of examination sections.

1. A candidate may not take the entire examination or a section of the examination more than three times before becoming ineligible for licensure.
2. If a candidate fails the examination or a section of the examination on the third attempt, the candidate must satisfactorily complete an approved electrology course prior to being eligible for licensure.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11.1-08. Issuance, renewal, and reactivation of a license.

1. Upon receipt of a licensure application, the department shall evaluate the qualifications of the applicant for compliance with the requirements of this chapter.



2. The department may perform an onsite inspection of the facility or place of business if the department has received a complaint of noncompliance with this chapter against persons performing services as described in chapter 33-01-11.1.
3. If the applicant meets the requirements as found in this chapter, including the application fee, the department shall issue a license.
4. Licenses not renewed by December thirty-first of each year will be deemed suspended and an additional fee not to exceed ten dollars must be assessed from the applicant. Licenses not renewed by March of each year will be terminated and reapplication for licensure will be needed to reinstate the license.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

#### 33-03-11.1-09. Continuing education.

1. To maintain licensure, electrologists must obtain a minimum of five hours of electrology-related continuing education hours per year.
2. Home-study electrology-related continuing education programs may comprise not more than two hours of the total five hour yearly requirement.
3. Certificates of completion to verify number of continuing education hours must be submitted to the department along with annual renewal applications and fees in order to obtain a renewal license.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11.1-10. Infection control and safety. Facilities utilized as the site for the practice of electrology must provide a clean and sanitary environment to promote appropriate infection control. The environment must be clean, well-lighted, provide good ventilation, and infection control practices must comply with requirements described in Hygienic and Safety Standards for the Practice of Electrology, Journal of Electrology, The Journal of the American Electrology Association, Volume 4, January 1989, Number 1.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11.1-11. Location of business. Licensees may not practice at any location other than those listed with the department as the place of business. The licensee must carry their license with them and exceptions may be granted for demonstrations for educational purposes, provided the demonstration does not exceed a one-day period of time.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11.1-12. Equipment. Practicing electrologists shall maintain the following equipment:

1. A probe-type epilator approved by the federal communications commission.
2. A sufficient supply of disposable or sterile needles or probes, probe tips, and sterile forceps or tweezers for each patient.
3. A treatment light to enable adequate visualization of the treatment area.
4. A hemostate, forceps, or tweezer forcep to transfer sterile instruments.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11.1-13. Restrictions to practice. Electrologists may not perform electrolysis treatment if any of the following are present:

1. Licensee is diagnosed as having a communicable disease or parasitic infection.
2. The hair to be removed is in an area of high bacterial colonization such as nostrils or ear canals.
3. The hair to be removed is from a wart, mole, birthmark, eyelashes, a diabetic patient, or a patient with a pacemaker unless a written order for the treatment has been obtained from the client's physician prior to treatment.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11.1-14. Client records. Licensed electrologists shall compile and maintain a record of health history assessment information on each client. Each record must include at least:

1. Name and address of client.
2. Type of treatment required or requested and physician order if necessary.
3. Description of hair and skin.
4. Date and duration of each treatment.
5. Special instructions or notations relating to treatment precautions or needs, such as allergies or a pacemaker.
6. Name and telephone number of referring physician if applicable.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11.1-15. Complaints. After receipt of a complaint regarding violation of electrology licensure rules, the department shall request that the complainant submit the complaint in writing. Confidentiality regarding the identity of the complainant will be maintained if requested by the complainant.

1. The department shall send a written summary of the complaint by certified mail to the electrologist requesting a written reply to the allegation.
2. A reply from an electrologist will be considered by the department if received within fourteen days of the date on which the electrologist received the complaint summary.
3. The department will determine if further action including an onsite inspection is required in investigating the complaint.
4. A summary of the results of the investigation will be sent to the complainant and the licensed electrologists within fourteen days of the completion of the investigation.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11.1-16. Penalties for infraction of this chapter. The department may invoke penalties for violations of this chapter.

1. The department, based on a determination that a licensee has violated or continues to violate this chapter, may suspend, revoke, or impose a provisional license.
2. The department may levy a civil money penalty against an electrologist in an amount not to exceed twenty-five dollars per day for noncompliance with this chapter.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

33-03-11.1-17. Approved training curriculum. Only programs meeting the criteria in section 33-03-11.1-11 will be considered as being an approved training curriculum.

1. After January 1, 1992, unless previously grandfathered under section 33-03-11.1-04, applicants will be eligible for licensure only if they have successfully completed a department-approved electrology examination or an electrology course from a school whose curriculum includes, at a minimum, six hundred hours, three hundred seventy of which are practical training.
2. Curriculum breakdown for approved electrology training programs is as follows:

Curriculum requirement	Theory Hours	Practical Hours
Law and rules	5	0
Bacteriology	20	0
Sanitation and sterilization	20	15
Anatomy and physiology	20	0
Endocrinology	20	0
Structure, dynamics and diseases of skin and hair	30	0
Circulatory and nervous system	20	0
Electricity	20	0
Electrolysis	20	115
Thermolysis	20	115
Combination of electrolysis and thermolysis combined	20	110
Draping and positioning	10	10
Professional ethics and business practices	5	5
Totals	<u>230</u>	<u>370</u>

3. A school providing a total of at least six hundred hours may be approved by the department if the school provides



documentation that all of the areas listed in subsection 2 have been included but the hours per subject differ.

4. Official transcripts for schooling must be submitted to the department for approval prior to determining eligibility of the individual for licensure.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

STAFF COMMENT: Chapter 33-03-27 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-03-27  
STATE COMMUNITY MATCHING PHYSICIAN LOAN REPAYMENT PROGRAM

Section

33-03-27-01	Definitions
33-03-27-02	Process
33-03-27-03	Loan Repayment Contract

33-03-27-01. Definitions.

1. "Applicant" means an eligible physician who applies to the council for repayment of an eligible loan.
2. "Center for rural health" means the center for rural health at the university of North Dakota.
3. "Community" means any county, city, or township in North Dakota.
4. "Council" means the state health council.
5. "Department" means the state department of health and consolidated laboratories.
6. "Eligible community" means a North Dakota community with a need for a physician in the medical fields of general practice, family practice, general internal medicine, general obstetrics and gynecology, general surgery, general pediatrics, or general psychiatry. The center for rural health shall designate eligible communities.
7. "Eligible loan" means an education loan acceptable to an accredited medical or osteopathic school and made by a bank, credit union, savings and loan association, insurance company, accredited school, government, or other financial or credit institution in its capacity as lender and in which the lender

is subject to examination and supervision by an agency of the United States or the state in which the lender has its principal place of business.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17.2-03, 43-17.2-03

33-03-27-02. Responsibilities and process.

1. At least annually the center for rural health shall provide public notice to communities and physicians, medical students, and interns of the loan repayment program.
2. A community wishing to be designated as eligible for participation in the program shall complete a form developed by the center for rural health. Forms will be available upon request from the department and the center for rural health. Completed forms must be submitted to the center for rural health. In addition to the criteria stated in North Dakota Century Code section 43-17.2-03, the form must include:
  - a. A statement of medical needs.
  - b. A statement of the type of physician services required to meet the needs.
  - c. A signed statement of broad-based endorsement and financial commitment to participate in this program.
3. The center for rural health shall update and give the department a list of eligible communities by January of each year.
4. The center for rural health shall assist eligible communities locate eligible physicians.
5. A physician may apply for repayment of an education loan on an application developed by the department and the center for rural health. The application will be available upon request from the department and center for rural health. In addition to the criteria stated in North Dakota Century Code section 43-17.2-03, the applicant shall submit the completed application to the department. The application must include the following information:
  - a. The licensure status of the applicant.
  - b. A history of all medical licenses held by the applicant.
  - c. A description of any litigation to which the applicant is a party.

d. The health status of the applicant.

Three letters of recommendation and an agreement signed by the applicant and the community stating the conditions of the loan repayment shall be submitted along with the application.

6. The department and center for rural health shall jointly review the application within sixty days of its receipt. The application and its review will be considered by the council at its next regularly scheduled meeting.
7. The council shall consider the criteria specified in North Dakota Century Code section 43-17.2-03, as well as all information contained in the application and accompanying documents.
8. The council shall approve or deny the application within ninety days after the council meeting when the application was considered.
9. The council may approve more than five applications in any fiscal year; however, no more than five loan repayments can begin in any fiscal year.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-27.2-02, 43-17.2-03

33-03-27-03. Loan repayment contract.

1. Before receiving a loan repayment under this chapter, each applicant selected shall enter into a loan repayment contract with the state and community agreeing to the terms and conditions upon which the loan repayment is granted, the penalties for a breach of the loan repayment contract, and the conditions under which the applicant can be released from any obligations under the contract without penalty.
2. The state health officer shall sign the loan repayment contract for the state. A community representative shall sign the loan repayment contract for the community.
3. The loan repayment contract must include:
  - a. The amounts to be paid to the physician by the state and by the community.
  - b. The specific term in which the physician is obligated to provide medical services within the community.

- c. A provision that any financial obligation of the state arising out of a loan repayment contract entered into under this chapter, and any obligation of the applicant that is conditioned thereon, is contingent on funds being appropriated by the legislature for loan repayments under North Dakota Century Code chapter 43-17.2.
- d. Such other statements of the rights and liabilities of the department and of the applicant considered necessary by the council.

History: Effective February 1, 1992.

General Authority: NDCC 43-38-03

Law Implemented: NDCC 43-38-03

STAFF COMMENT: Chapter 33-03-28 contains all new material but is not underscored so as to improve readability.

### CHAPTER 33-03-28 DISTRICT HEALTH UNITS

Section

33-03-28-01	Definitions
33-03-28-02	District Board of Health - Name
33-03-28-03	City-County Health Districts - Contracts
33-03-28-04	Equality of Services Provided
33-03-28-05	Distribution of Grants

33-03-28-01. Definitions.

1. "Approved health department" means a city health department which:
  - a. Is in compliance with all minimum standards for core services/programs as established by the department;
  - b. Has at a minimum, a city health officer and at least a one-half time registered nurse;
  - c. Submits records and reports as requested by the department; and
  - d. Is funded by the city at a level of at least two dollars and fifty cents per capita.
2. "Department" means the state department of health and consolidated laboratories.
3. "District health unit" means one or more contiguous counties which have adopted a district health plan pursuant to North



Dakota Century Code chapter 23-14. It includes all cities within the counties except those cities of greater than fifteen thousand population which have specifically rejected the plan.

History: Effective February 1, 1992.  
General Authority: NDCC 23-14-01.6  
Law Implemented: NDCC 23-14-01.1

33-03-28-02. District board of health - Name. Each newly formed district board of health shall select a name for its district health unit. The name may be changed at any time upon a majority vote by the district board of health.

History: Effective February 1, 1992.  
General Authority: NDCC 23-14-01.6  
Law Implemented: NDCC 23-14-04, 23-14-09

33-03-28-03. City-county health districts - Contracts.

1. A contract entered into between an approved health department and a board of county commissioners pursuant to North Dakota Century Code sections 23-14-01.1 and 54-40-08 must specify the public health services and programs to be provided, the manner in which they will be provided, and the cost to the county for their provision.
2. The contract must be reviewed annually by the board of county commissioners and by the city health department to determine whether the services provided are adequate, whether additional needs exist, and whether any changes to the contract need to be negotiated.

History: Effective February 1, 1992.  
General Authority: NDCC 23-14-01.6  
Law Implemented: NDCC 23-14-01.1

33-03-28-04. Equality of services provided.

1. The district board of health is responsible for determining which public health services and programs the district health unit will provide.
2. Any services provided by the district health unit must be made available to all areas within the health district.
3. If it is not practical for the district health unit to provide the services directly through its own staff, it may contract with another entity to deliver the services.

4. To maintain equality of service throughout the district, it is recommended that the district health unit employ, at a minimum, the services of at least a one-half time registered nurse for each county within the district, and that each county within the district have the services of a public health officer.

History: Effective February 1, 1992.

General Authority: NDCC 23-14-01.6

Law Implemented: NDCC 23-14-01.6

#### 33-03-28-05. Distribution of grants.

1. To be eligible for any grant of state moneys through the department, a district health unit must meet all of the following criteria:
  - a. Be funded at a level of two dollars and fifty cents or greater for each person residing within the health district exclusive of any state grant money;
  - b. Have an active district board of health that meets quarterly, maintains minutes of its meetings, and provides a copy of the minutes to the department;
  - c. Have the services of at least a one-half time registered nurse for each county within the district;
  - d. Have a health officer available for each county within the district;
  - e. Submit records and reports as requested by the department; and
  - f. Be in compliance with all minimum standards for core services and programs as established by the department.
2. Notwithstanding the provisions of subsection 1, any district health unit may, at the department's discretion, be granted a waiver of the requirements in subdivisions a, c, and f of subsection 1 for the first three years of the district's existence.

History: Effective February 1, 1992.

General Authority: NDCC 23-14-01.6

Law Implemented: NDCC 23-14-01.6

STAFF COMMENT: Chapters 33-03-29 and 33-03-30 contain all new material but are not underscored so as to improve readability.

CHAPTER 33-03-29  
RESIDENTIAL CARE FACILITIES FOR CHILDREN WITH AUTISM

Section	
33-03-29-01	Definitions
33-03-29-02	General Licensing Provision
33-03-29-03	Unrestricted License
33-03-29-04	Provisional License
33-03-29-05	Denial or Revocation of License
33-03-29-06	Denial of Initial License
33-03-29-07	Criteria for Adverse Licensure Actions
33-03-29-08	Restriction or Limitation of Admissions
33-03-29-09	Enforcement - Penalties
33-03-29-10	Accreditation
33-03-29-11	Submission and Availability of Accreditation Documents
33-03-29-12	Provision for Becoming Accredited
33-03-29-13	Complaints

33-03-29-01. Definitions.

1. "Abuse" includes mental, physical, sexual, and verbal abuse. Mental abuse includes humiliation, harassment, threats of punishment, or deprivation. Physical abuse includes hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment. Sexual abuse includes sexual harassment, sexual coercion, sexual contact, or sexual assault. Verbal abuse includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to residents or their families, or within their hearing distance, to describe residents, regardless of their age, ability to comprehend, or disability.
2. "Administrator" means the individual person who is in general administrative charge of the facility.
3. "Autism" has the same meaning as in North Dakota Century Code chapter 23-09.4.
4. "Children with autism" means individuals up to the age of twenty-two who have a medical diagnosis of autism or autistic-like characteristics.
5. "Direct supervision" means the provision of guidance by a superior who is on the premises, for the accomplishment of an assigned task.
6. "Mental health professional" means:

- a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
  - b. A social worker with a master's degree in social work from an accredited program.
  - c. A registered nurse with a master's degree in psychiatric nursing from an accredited program.
  - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as identified in subsection 3.
7. "Neglect" includes failure to carry out resident services as directed or ordered by the physician or other authorized personnel in the facility, failure to give proper attention to facility residents, or failure to carry out services for residents of the facility as through careless oversight.
  8. "Resident" means an individual up to the age of twenty-two who lives and receives services in a residential care facility for children with autism.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-01, 23-09.4-02

### 33-03-29-02. General licensing provision.

1. No person or entity may establish, maintain, or operate a residential care facility for children with autism without first having obtained a license from the department. Any person or entity who owns or leases a residential care facility for children with autism and desires to maintain or operate it shall apply to the department for a license on the form prescribed and shall obtain a license before accepting children for care or treatment.
2. Each residential care facility for children with autism applying for licensure must be designated by a distinctive name consistent with the services offered to avoid public confusion or misrepresentation. The name may not be changed without department approval.
3. Upon receipt of a completed license application, the department shall review the residential care facility for children with autism, including architectural plans submitted by the facility, to determine compliance with this chapter, including onsite inspections, as appropriate.



4. Once received, the license must be displayed in a conspicuous place. Each license is valid only in the hands of the person or entity to whom it is issued and is not subject to sale, assignment, or other transfer, voluntary or involuntary.
5. The department may require submission of periodic reports including, but not limited to, staffing reports, census data, statistical information, and such business records as the department may reasonably require for the performance of its licensure functions.
6. The department and any duly authorized representative thereof has the right to enter upon and into the premises of any residential care facility for children with autism or facility providing services consistent with this chapter or the North Dakota statutory definition for residential care facility for children with autism.
7. An initial or renewal license is valid for one year from the date of issuance.
8. If a facility holds a current license from the department or another appropriate state agency and appropriately responds to the population served, then additional licensure under this chapter is not required.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-02, 23-09.4-03

33-03-29-03. Unrestricted license. An unrestricted license is valid for a period not to exceed one year from the date of issuance and must state the maximum number of persons who may reside in the residential care facility for children with autism.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-02, 23-09.4-03

#### 33-03-29-04. Provisional license.

1. A provisional license may be issued to a residential care facility for children with autism which does not comply with this chapter if practices in the facility do not pose a danger to the health or safety of the residents as determined by the department.
2. A provisional license must be prominently stamped and state that the residential care facility for children with autism has failed to comply with applicable rules of the department and must be accompanied by a written statement of the specific

rule or statute violated and the factual basis of the violation. The provisional license must expire at a set date, not to exceed ninety days from the date of issuance.

3. A provisional license will be revoked by the department on the ninetieth day from the date of issuance, or sooner if applicable, if compliance is not achieved or a department-approved, acceptable plan of correction is not received. If compliance is achieved, the provisional license will be exchanged for an unrestricted license which will bear the same date as the date on which the facility was found by the department to be in compliance with the licensure rules.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-02, 23-09.4-03

### 33-03-29-05. Denial or revocation of license.

1. Application for renewal of a license for a residential care facility for children with autism must be denied and the license will be terminated or allowed to expire when the department finds that a condition, occurrence, or situation in the facility is a threat to the health or safety of the residents.
2. When the department decides that an application for renewal is to be denied, or that a license is to be revoked, the department shall notify the residential care facility for children with autism. The notice to the facility must include:
  - a. A clear and concise statement of the denial or revocation. The statement must include a citation to the provisions of this chapter on which the application for renewal is being denied, or the process for licensure revocation is being implemented.
  - b. A statement of the date on which the current license of the residential care facility for children with autism will expire must be included.
  - c. A description of the right of the applicant to appeal the denial or revocation of the application for the renewal of the license and the right to a hearing must be mailed to the licensee.

3. The current license of the residential care facility for children with autism may be extended by the department when it finds that such extension is necessary to assist relocation of residents.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-03, 23-09.4-08

33-03-29-06. Denial of initial license.

1. A suitability review by the department must be completed prior to approval of a licensure application.
2. A determination by the department through a suitability review to deny the issuance of a license must be based on a finding that one or more of the following criteria are met:
  - a. The applicant, any member of the firm, partnership, or association which is the applicant, any officer or stockholder of the corporation which is the applicant, or the person designated to manage or supervise the residential care facility for children with autism has been convicted of, or had probation for, a crime within the past five years that would impact the suitability of the applicant specific to operation of the facility. Probation or a conviction must be verified by a certified copy of the court record.
  - b. The applicant has had a prior license revocation in the past five years and both of the following conditions are met:
    - (1) The residential care facility for children with autism in question was owned or operated by the applicant, by a controlling owner of the applicant, by a combination of owners of the applicant, or by an affiliate who is a controlling owner of the applicant. Operated for purposes of this section means exercising overall management, direction, or supervision of the residential care facility for children with autism; and
    - (2) The basis of the prior revocation renders the applicant unqualified or incapable of operating a residential care facility for children with autism in accordance with the standards set forth in this chapter. This determination will be based on the applicant's qualifications and ability to meet the

criteria outlined in this section as evidenced by the application and the applicant's prior history.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-02

33-03-29-07. Criteria for adverse licensure actions.

1. Adverse licensure actions include determinations to deny the issuance of an initial license, or to deny the issuance of a renewal of a license of a residential care facility for children with autism.
2. A determination by the department to take adverse licensure action against a residential care facility for children with autism may be based on a finding that one or more of the following criteria are met:
  - a. The residential care facility for children with autism has failed to meet the standards specified in this chapter.
  - b. The existing residential care facility for children with autism is operating, or the applicant intends to operate, with personnel which are insufficient in number or unqualified by training or experience to properly care for the number and type of residents in the facility.
  - c. The residential care facility for children with autism is not under direct supervision of an administrator or an individual assigned to carry out the administrative responsibilities.
  - d. The residential care facility for children with autism has committed either of the following actions:
    - (1) The residential care facility for children with autism has inappropriately converted for its own use the property of a resident.
    - (2) The residential care facility for children with autism has secured property, or a bequest of property, from a resident or family by undue influence.
  - e. The residential care facility for children with autism submitted false information either on the licensure or renewal application forms or during the course of an inspection or survey of the residential care facility for children with autism.



- f. The residential care facility for children with autism has refused to allow an inspection or survey of the facility by agents of the department.
  - g. The facility employs personnel, has practices or procedures, or construction hazards which would be detrimental to the health, safety, or well-being of residents.
3. The department shall consider all available evidence at the time of the determination, including the history of the residential care facility for children with autism and the applicant in complying with this chapter, notices of violations which have been issued to the residential care facility for children with autism and the applicant, findings of surveys and inspections, and evidence provided by the residential care facility for children with autism, residents, law enforcement officials, and other interested individuals.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-02, 28-32-05.1

**33-03-29-08. Restriction or limitation of admissions.**

1. The department reserves the right to restrict or limit admissions to a residential care facility for children with autism under the following conditions:
- a. One or more complaints of resident abuse in the residential care facility for children with autism have been reported, investigated, and substantiated by the department. The restriction will be in effect for six months or until the conditions leading to the abuse have been corrected as substantiated by the department.
  - b. The department has surveyed the facility and found rules related to health or safety are not being met or the facility is in the process of correction and placing additional residents in the facility would adversely affect the health or safety of a resident. The restriction will be in effect for six months or until the facility demonstrates to the department's satisfaction that the corrections have been made and the facility is in compliance with the licensure rules.
2. The department shall notify the facility in writing when a decision is made to restrict or limit admissions. The restriction or limitation takes effect ninety days from the date on which the onsite survey or complaint investigation visit was completed.

- a. The notice must include the basis of the department's decision and must advise the facility of the right to request review through an onsite revisit by the department. The request must be made in writing within forty-five days of the survey or complaint investigation completion date.
- b. If a request for review is made, the department will review all material relating to the allegation and to the limitation and restriction on admissions. The department shall determine, based on review of the material and an onsite revisit, if requested, whether or not to sustain the decision to limit or restrict placement of residents and shall notify the facility in writing of the decision within ten days of the completion of the onsite revisit.
- c. If the department determined not to sustain the decision, the limitation or restriction may not be implemented. The restriction or limitation on admissions, if the department sustains the decision, will remain in effect until the department determines that the conditions leading to the restriction or limitation have been corrected.
- d. When the department sustains the decision, a public notice must be published by the department in the local newspaper fifteen days prior to the imposition of the restriction or limitation stating the name of the facility, the restriction or limitation to be imposed, the date on which the limitation or restriction will be effective, and the length of time for which it will be imposed. Upon rescinding a restriction, the department will publish a notice in the local newspaper stating the date upon which the restriction was rescinded.
  - (1) The department of human services, developmental disabilities division, as well as the department of public instruction, special education division, must be notified in writing by the department regarding the restriction or limitation of admissions.
  - (2) Information regarding residential care facilities for children with autism is public information and is available upon request through this department.
- e. A department decision may be appealed to the district court under North Dakota Century Code chapter 28-32.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-02, 23-09.4-03, 28-32-05.1

33-03-29-09. Enforcement - Penalties. The purpose of enforcement actions is to protect residents. Enforcement actions by the department against a residential care facility for children with autism may include monetary penalties against a residential care facility for children with autism for failure to correct a violation or failure to comply with a department-approved plan of correction for such violation as follows:

1. Not less than five dollars per resident per day for each day the violation remains uncorrected if the area of noncompliance relates primarily to administrative tasks within the facility.
2. Not less than eight dollars per resident per day for each day the violation remains uncorrected if the noncompliance relates primarily to provisions dealing with the rights of residents as described in North Dakota Century Code chapter 50-10.2.
3. Not less than ten dollars per resident per day for each day the violation remains uncorrected for noncompliance relating primarily to provisions adopted to protect the health or safety of residents.
4. For purposes of department-imposed penalties under this section, a noncompliance issue or violation must be deemed to have first occurred as of the date of the department determination of noncompliance or the date of the onsite investigation completion, whichever is later.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-06, 23-09.4-08

#### 33-03-29-10. Accreditation.

1. The residential care facility for children with autism shall provide services to assist children with a medical diagnosis of autism or autistic-like characteristics gain or regain their highest practicable level of mental, physical, and emotional functioning including the capacity to function adaptively in their environment, to care for themselves, and be accepted by society. In achieving this goal, residential care facilities for children with autism shall attain and maintain accreditation by the commission on accreditation of rehabilitation facilities standards for organizations serving people with disabilities in the categories of integrated living programs and infant and early childhood developmental programs or accreditation by the accreditation council on services for people with developmental disabilities.
2. The residential care facility for children with autism shall provide, through an interdisciplinary assessment and approach, at a minimum, services including:

- a. Twenty-four-hour assistance with activities of daily living in a homelike environment which includes dietary, laundry, housekeeping, and janitorial services.
  - b. Provision of or arrangement for diagnostic and treatment services specific to the individual needs of children with autism including, but not limited to, medical, dental, nursing or physician services, audiology and speech services, physical and occupational therapy and orthotics services, and psychiatric services.
  - c. Behavioral management services provided by or under the direction of a qualified mental health professional.
  - d. Educational and special education services provided by certified personnel in accordance with North Dakota Century Code chapters 15-47 and 15-59.
3. As a result of interdisciplinary assessments, an individualized program plan for the resident must be established which describes specific needs, services, and timeframes for implementation and evaluation.
  4. The residential care facility for children with autism shall comply with all applicable federal, state, and local laws, rules, regulations, and requirements.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-02, 23-09.4-04, 23-09.4-05

33-03-29-11. Submission and availability of accreditation documents.

1. The residential care facility for children with autism, upon receipt, shall submit all accreditation survey results, recommendations, and plans of correction to the department.
2. The department may, based on the accreditation survey results, require changes or additions, or both, to recommendations or plans of corrections, or both, in instances where endangerment to the health, well-being, or safety of residents is involved.
3. In addition to department involvement with plans of correction, the department may impose enforcement sanctions including restriction or limitation of admissions, or monetary penalties.

4. Onsite review must be conducted by the department to assess compliance with licensure requirements not included in the accreditation process.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-02

#### 33-03-29-12. Provision for becoming accredited.

1. Residential care facilities for children with autism not having attained accreditation by the commission on accreditation of rehabilitation facilities in the categories of integrated living facility and infant and early childhood development programs or the accreditation council on services for people with developmental disabilities shall attain accreditation within twelve months of February 1, 1992.
2. Residential care facilities for children with autism requesting licensure after January 1, 1992, will be required to be accredited prior to licensure as a facility for children with autism.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-02

#### 33-03-29-13. Complaints.

1. No residential care facilities for children with autism or persons therein may violate resident rights as defined in North Dakota Century Code chapter 50-10.2.
2. Any person may register a complaint with the department alleging violation of applicable laws, rules, requirements, or allegations of abuse, neglect, or theft of resident funds by a facility or other persons in the residential care facility for children with autism. Individuals alleging abuse shall report to other entities as required by North Dakota Century Code section 50-25.1-03.
3. If a complaint becomes the subject of a formal administrative or judicial proceeding, nothing in this subsection may be construed to prohibit the disclosure of information which would otherwise be disclosed in a judicial or administrative proceeding.
4. The department shall have the authority to conduct unannounced inspections of the residential care facility for children with autism involved in a complaint and any other investigations necessary to determine the validity of the complaint.



5. The department or the department's representative shall notify the facility's administrator or person in charge of the facility involved in the complaint of the substance of the complaint for the first time at the time of the investigation.
6. No later than ten days after the completion of the investigation, the department shall prepare a written report of the results of the investigation and shall notify the complainant and the facility in writing of the results of the investigation.
7. Residential care facilities for children with autism are prohibited from discharging or discriminating in any way against a resident by whom or on whose behalf a complaint has been submitted to the department or who has participated in a complaint investigation process. Facilities are prohibited from discharging or discriminating against any employee who has submitted a complaint or who has assisted the department or any other legal authority in a complaint-related investigation for reason of such submission or assistance. Violation of prohibitions in this item is grounds for suspending or revoking a facility license.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-02, 23-09.4-06, 28-32-05.1

CHAPTER 33-03-30  
CONSTRUCTION STANDARDS FOR RESIDENTIAL CARE FACILITIES  
FOR CHILDREN WITH AUTISM

Section

33-03-30-01	Definitions
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33-03-30-01. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Ambulatory" means able to walk without assistance.
2. "Department" means the state department of health and consolidated laboratories.
3. "Developmental disability" includes children with autism.

4. "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a walker, crutches, a wheelchair, or a wheeled platform.
5. "Nonambulatory" means unable to walk without staff assistance.
6. "Nonmobile" means unable to move from place to place without staff assistance.
7. "Residential care facility for children with autism" means a residential facility providing a homelike atmosphere designed and arranged to meet the needs of ambulatory autistic children capable of taking action for self-preservation consistent with the fire code requirements.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-09.4-01, 23-09.4-02

33-03-30-02. Location of residential care facilities for children with autism - Hazardous areas.

1. Residential care facilities for children with autism must be located at least three hundred feet [91.44 meters] from hazardous areas such as bulk fuel or chemical storage areas, anhydrous ammonia facilities, or other fire hazards or sources of noxious or odoriferous emissions.
2. Residential care facilities for children with autism may not be located in areas subject to adverse environmental conditions such as mud slides, harmful air pollution, smoke or dust, sewage hazards, rodent or vermin infestations, excessive noise, vibration, or vehicular traffic.
3. Residential care facilities for children with autism may not be located in an area within the one hundred year flood base elevations unless the lowest floor elevation is above the one hundred year base flood elevation and the facility is free from significant adverse effects of the velocity of moving water or by wave impact during the one hundred year flood.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-01-03, 23-09.4-02

33-03-30-03. Fire safety.

1. Residential care facilities for children with autism must be located in areas served by an organized fire department.

2. Residential care facilities for children with autism must comply with chapter twenty-one of the 1988 edition of the Life Safety Code and its appendices. Residents of the facility must be ambulatory and capable of following directions and taking appropriate action for self-preservation under emergency conditions.
3. A residential care facility for children with autism for the mobile nonambulatory, nonambulatory, and nonmobile shall comply with chapters twelve or thirteen of the 1988 edition of the Life Safety Code as applicable. The fire safety evaluation system may be utilized in the evaluation of existing buildings.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-01-03, 23-09.4-02

#### 33-03-30-04. Water supply.

1. Residential care facilities for children with autism must be located in areas where public or private water supplies approved by the department are available. Approved public water supplies must be used where available.
2. When a private water supply is utilized, annual water samples must be submitted to the department and analyzed to determine bacteriological and nitrate content.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-01-03, 23-09.4-02

#### 33-03-30-05. Sewage disposal.

1. Residential care facilities for children with autism must be located in areas where public or private sewage systems approved by the department are available. Approved public sewage disposal systems must be used where available.
2. Plan and specifications for proposed private sewage disposal systems or alteration to such systems must be approved by the department prior to their construction.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-01-03, 23-09.4-02

33-03-30-06. Physical plant. Buildings housing facilities for children with autism shall:

1. Provide a design making:
  - a. The residential care facility for children with autism for the ambulatory developmentally disabled accessible to nonambulatory visitors and employees, with at least one bathroom accessible to and usable by such visitors and employees. When the facility houses only ambulatory persons, the department may waive this requirement and the balance of the handicapped standards in North Dakota Century Code section 48-02-19. The waiver may be granted when only ambulatory developmentally disabled persons are served.
  - b. The residential care facility for children with autism for the mobile nonambulatory, nonambulatory, and nonmobile developmentally disabled comply with North Dakota Century Code section 48-02-19.
2. Be constructed to accommodate no more than fifteen eligible residents.
3. Be limited in size to a maximum of three hundred fifty square feet [32.52 square meters] per resident for the first eight residents, inclusive of space for employees. Facilities of more than eight resident beds must be limited to one hundred seventy-five square feet [16.26 square meters] per additional resident bed.
4. Provide space for dining, kitchen, family living, and recreation including outdoor play area, utility, and bedrooms as an integral part of a single structure.
5. Meet these sleeping area standards:
  - a. Require no more than two residents to share a bedroom other than on a temporary basis not to exceed ten days.
  - b. Provide no less than one hundred square feet [9.29 square meters] of floor area exclusive of bathroom and closet space for single occupancy bedrooms.
  - c. Provide no less than eighty square feet [7.43 square meters] per bed of floor space exclusive of closet and bathroom space in double occupancy bedrooms.
  - d. Locate bedrooms on an outside wall and separate them from other rooms and spaces by walls extending from floor to ceiling.
  - e. Locate bedrooms at or above grade level to provide sufficient window space to accommodate adequate lighting.
6. Provide at least one full bathroom for every four residents.

7. Be designed to accommodate the resident's privacy, with bedrooms and bathrooms arranged to provide separation of male and female residents.
8. Provide sufficient space in the kitchen to permit the participation of residents as well as staff in food preparation. Provide appropriate space and equipment, including two-compartment sink, to adequately serve the food preparation and storage requirements of the facility.
9. Provide sufficient laundry space to include, in addition to a washer and dryer, storage for laundry supplies, accommodation for ironing, and counterspace for folding clothing and linens.
10. Provide sufficient areas appropriate for group and individual classroom activities, recreational and leisure activities, special therapy, and family visiting activities.
11. Provide staff accommodations including space to accommodate employees, limited to living room, efficiency kitchen, one full bathroom, and a double occupancy bedroom, when as a condition of employment they must live onsite or a multipurpose space usable for sleeping for employees serving in shifts. Staff accommodations other than bedroom space, for employees required to live onsite may be utilized jointly by staff and residents.
12. Provide sufficient storage, in addition to closet space, to accommodate the storage of out-of-season clothing, outdoor furniture, garden tools, lawnmower, and other equipment as needed.
13. Provide a tempering valve, located to preclude resident access, to control the temperature of hot water supplied to lavatories and bathing facilities. The tempering valve must permit control of temperature in the range of one hundred ten degrees Fahrenheit [47.22 degrees Celsius] to one hundred forty degrees Fahrenheit [60 degrees Celsius]. Hot water supplied to clothes washers and dishwashers must be one hundred thirty-five to one hundred forty degrees Fahrenheit [57.22 to 60 degrees Celsius].
14. Be equipped with emergency lighting capable of sustained battery operation.
15. Provide for maintenance of building and equipment including:
  - a. The interior and exterior of the building must be clean, orderly, and in good repair.
  - b. All essential mechanical and electrical equipment must be maintained in a safe operating condition.



- c. Resident care equipment must be clean and maintained in a safe operating condition.
- d. There must be limitation of sound at comfort levels.
- e. Provision must be made for adequate and comfortable lighting levels in all areas.
- f. All resident areas must be clean, sanitary, and free from odors.
- g. A comfortable room temperature must be maintained.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-01-03, 23-09.4-02

33-03-30-07. Waiver process. Upon written application, the department may grant a waiver from specific provisions of this chapter, except no waiver may be granted which may permit or authorize a danger to the health or safety of residents or impede their normalization process. Waivers specific to Life Safety Code requirements must be approved in writing by the state fire marshal prior to department approval.

History: Effective February 1, 1992.

General Authority: NDCC 23-09.4-02, 23-09.4-07

Law Implemented: NDCC 23-01-03, 23-09.4-02

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

1. Acquired immune deficiency syndrome (A.I.D.S.).
2. Amebiasis.
3. Anthrax.
4. Blastomycosis.
5. Botulism.
6. Brucellosis.
7. Campylobacter enteritis.
8. Chancroid.
9. Chickenpox (varicella).

10. Chlamydial infections.
11. Cholera.
12. Diphtheria.
13. E. coli 0157:H7 infection.
14. Encephalitis (specify etiology).
15. Foodborne or waterborne outbreaks.
16. Giardiasis.
17. Gonorrhoea.
18. Granuloma inguinale.
19. Haemophilus influenzae b.
20. Hemolytic uremic syndrome.
21. Hepatitis (specify type).
22. Herpes simplex (genital).
23. Histoplasmosis.
24. Human immunodeficiency virus infection.
25. Influenza.
26. Lead poisoning.
27. Legionellosis.
- ~~27.~~ 28. Leprosy.
- ~~28.~~ 29. Leptospirosis.
- ~~29.~~ 30. Lyme disease.
- ~~30.~~ 31. Lymphogranuloma venereum.
- ~~31.~~ 32. Malaria.
- ~~32.~~ 33. Measles (rubeola).
- ~~33.~~ 34. Meningitis (specify etiology).
- ~~34.~~ 35. Mumps.
- ~~35.~~ 36. Nosocomial infections.

- ~~36.~~ 37. Ornithosis (Psittacosis).
- ~~37.~~ 38. Pertussis.
- ~~38.~~ 39. Plague.
- ~~39.~~ 40. Poliomyelitis.
- ~~40.~~ 41. Rabies.
- ~~41.~~ 42. Reye's syndrome.
- ~~42.~~ 43. Rocky Mountain spotted fever.
- ~~43.~~ 44. Rubella.
- ~~44.~~ 45. Salmonellosis.
- ~~45.~~ 46. Scabies (in institutions).
- ~~46.~~ 47. Shigellosis.
- ~~47.~~ 48. Syphilis.
- ~~48.~~ 49. Tetanus.
- ~~49.~~ 50. Toxic-shock syndrome.
- ~~50.~~ 51. Trichinosis.
- ~~51.~~ 52. Tuberculosis.
- ~~52.~~ 53. Tularemia.
- ~~53.~~ 54. Typhoid fever.

History: Amended effective May 1, 1984; December 1, 1986; January 1, 1988; January 1, 1989; October 1, 1990; January 1, 1991; February 1, 1992.

General Authority: NDCC 23-07-01

Law Implemented: NDCC 23-07-01

#### 33-07-03.1-01. General provisions.

1. Institutions covered by the Medical Hospital Licensure Act. The following types of institutions have been so designated for the purpose of rules and are deemed to come within the provisions of North Dakota Century Code section 23-16-01 which provides for licensure of any institution which maintains and operates organized facilities for the diagnosis, treatment, or care of two or more nonrelated persons suffering from illness,

injury, or deformity or where obstetrical or other care is rendered over a period exceeding twenty-four hours.

- a. Hospitals, including general, medical, and specialized hospitals.
  - b. Long-term care facilities.
    - (1) Skilled nursing facilities.
    - (2) Intermediate care facilities.
  - c. Infirmaries.
  - d. Maternity homes.
  - e. Outpatient facilities, including ambulatory surgical centers (excluding physicians' clinics).
2. Institutions not covered by the Medical Hospital Licensure Act. The following types of institutions which provide some medical or nursing service are deemed not to come within the meaning of the Medical Hospital Licensure Act, North Dakota Century Code chapter 23-16.
- a. Any institution which is regularly licensed by the department of human services such as homes for unmarried mothers and homes providing custodial care for the aged.
  - b. Federal and state institutions. (In the case of state institutions, the primary purpose of which is the provision of medical care, the department has the responsibility for inspection on the same basis as those made of institutions which are covered by North Dakota Century Code chapter 23-16. Upon the findings of such inspections, recommendations will be formulated by the department.)
  - c. Chiropractic hospitals. (These hospitals are licensed under the provisions of North Dakota Century Code chapter 23-17.)
  - d. Homes in which the only persons receiving nursing care are those related to the householder by blood or marriage.
  - e. Homes in which only one person receives care at any one time except maternity homes which receive more than one patient in six months. Such maternity homes are deemed to come under North Dakota Century Code chapter 23-16 and are required to be licensed.

f. First-aid stations and emergency care facilities which do not provide accommodations for hospitalization as herein defined.

3. Definitions. The following terms are defined for purposes of North Dakota Century Code chapter 23-16.

a. "Abuse" includes mental, physical, sexual, and verbal abuse. Mental abuse includes, but is not limited to, humiliation, harassment, threats of punishment, or deprivation. Physical abuse includes hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment. Sexual abuse includes, but is not limited to, sexual harassment, sexual coercion, sexual contact, or sexual assault. Verbal abuse includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to residents or their families, or within their hearing distance, to describe residents, regardless of their age, ability to comprehend, or disability.

b. "Ambulatory surgical center" means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization.

~~b.~~ c. "Bed capacity" means:

(1) All spaces designed for resident bedrooms even if currently closed or assigned to easily convertible nonresident uses such as storage or staff quarters.

(2) Space in areas originally designed as solaria, waiting rooms, offices, conference rooms, and classrooms which have necessary fixed equipment (nurses' call, lighting, etc.) and are accessible to a nurses' station exclusively staffed for resident care.

(3) Space under construction designed as resident bedrooms or designed to be readily convertible to resident bedrooms if planned for immediate completion (excludes unfinished shelled-in floors).

Bed capacity is determined by the floor area (square feet) in the following manner:

(4) In measuring the floor area of spaces usable as resident bedrooms for the purpose of determining bed capacity, only the net usable space in the room may be considered. Space in toilet rooms, washrooms, closets, vestibules, and corridors may not be counted as part of the net usable space (square feet).



(5) Resident bedrooms must have adequate floor space to conveniently house necessary furniture and equipment, to provide for efficient resident care, and to provide for convenient movement of stretchers, and for the transfer of residents to and from beds. Adequate floor space is defined as:

(a) In single resident rooms the least dimension free of fixed obstructions must not be less than ten feet [3.05 meters], and the floor area must not be less than one hundred twenty-five square feet [11.61 square meters], nor more than one hundred forty-five square feet [13.47 square meters].

(b) Resident rooms having two or more beds must have as a minimum floor area, eighty square feet [7.43 square meters] of space free of fixed obstructions per bed. The least dimension of a rectangular multiple resident room must not be less than eleven feet six inches [3.50 meters] free of fixed obstructions, except in especially arranged rectangular rooms such as, for example, in the toe-to-toe arrangement where the minimum clear width must not be less than ten feet [3.05 meters] and the minimum clear length must not be less than seventeen feet six inches [5.33 meters] free of fixed obstructions.

(c) In the case of other than rectangular shaped rooms, there must be adherence to the principles of specified minimum dimensions and areas per bed in rectangular rooms.

~~c.~~ d. "Department" means the state department of health and consolidated laboratories.

e. "Discharge" means any dismissal from a nursing facility to a private, nonlicensed setting including a home or apartment, and the nursing facility ceases to be legally responsible for the care of the resident.

~~d.~~ f. "Emanating services" means services which originate out of and are provided out of a licensed skilled nursing facility or intermediate care facility to facilities not subject to licensure by the department for which the governing body of a licensed skilled nursing facility or intermediate care facility has responsibility.

~~e.~~ g. "General hospital" means an establishment with organized medical staffs; with permanent facilities that include inpatient beds; and with medical services including physician services and continuous nursing services to

provide diagnosis and treatment for a variety of medical conditions, both surgical and nonsurgical, and services including rehabilitation services.

- ~~f.~~ h. "Governing body" means the individual or group in whom the ultimate authority and legal responsibility is vested for the conduct of the long-term care facility.
- ~~g.~~ i. "Hospital" means an institution, the principal activity or business of which is the reception of a person for diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities therefor.
- ~~h.~~ j. "Hospitalization" means the reception and care of any person for a continuous period longer than twenty-four hours, for the purpose of consultations, diagnosis, or treatment including rehabilitation bearing on the physical and mental health of such person.
- ~~i.~~ k. "Infirmery" means those special inpatient facilities which are established in connection with an educational or penal institution, or an industrial or commercial establishment for persons who, during their attendance, confinement, or employment in such institution or establishment, require nursing service or physician treatment. Applicable requirements of North Dakota Administrative Code chapter 33-07-01 apply.
- ~~j.~~ l. "Level of care" means the classification of a resident in accordance with the resident's medical and nursing needs generally expressed as a skilled, intermediate, or basic level of care dependent upon the degree of care necessitated to adequately care for the needs of the resident.
- ~~k.~~ m. "Licensee" means the governing body of the hospital, related institution, skilled nursing facility, or intermediate care facility.
- ~~l.~~ n. "Long-term care facilities" are the following:
- (1) "Intermediate care facility" means an institution in which nursing care is rendered for compensation at any one time to two or more persons not related to the licensee by blood or marriage. An intermediate care facility shall serve persons suffering from prolonged physical or mental illness or defect or persons recovering from some injury or disease requiring less than twenty-four hours per day of nursing service provided by licensed personnel. Care given in an intermediate care facility must include procedures commonly employed in waiting on the sick,

such as administration of medication, preparation of special diets, giving of bedside care, applications of dressings and bandages, and carrying out treatments prescribed by a licensed physician. An intermediate care facility may not provide for any higher level of care.

(2) "Skilled nursing facility" means an institution in which nursing care is rendered for compensation at any one time to two or more persons not related to the licensee by blood or marriage. A skilled nursing facility must serve persons suffering from a prolonged physical or mental illness or defect or persons recovering from some injury or disease and requiring twenty-four-hour nursing services provided by licensed personnel. Care given in a skilled nursing facility must provide all of the procedures commonly employed in waiting on the sick, such as administration of medicines, preparation of special diets, giving of bedside care, applications of dressings and bandages, and carrying out of treatments prescribed by a licensed physician. A skilled nursing facility may not provide for any higher level of care.

(3) If a facility is established for the provisions of custodial and personal care, but it develops that two or more persons usually served by such institutions require nursing care, such institutions are deemed to come within the meaning of North Dakota Century Code chapter 23-16 and such facility must conform to this chapter and chapter 33-07-04.1 or the institution shall transfer such patients to facilities properly staffed and equipped to care for such persons.

m. o. "Maternity home" means an institution of private dwelling type in which care for maternity patients is rendered. Any such home which receives more than one maternity patient (exclusive of those related to the licensee by blood or marriage) within a period of six months is deemed to be a maternity home. A maternity home which regularly provides accommodations for two or more patients at any one time must be classified as a maternity hospital and is required to meet the requirements for a specialized hospital. Applicable requirements of chapter 33-07-01 apply.

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

~~o~~ q. "Medical staff" means a formal organization of physicians (and dentists, where appropriate) with the delegated authority and responsibility to maintain proper standards of medical care and to plan for continued improvement of that care. This does not preclude the establishment of other medical staff sections.

~~p~~ r. "Mental health professional" means:

- (1) A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
- (2) A social worker with a master's degree in social work from an accredited program.
- (3) A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
- (4) A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined in subsection 3.
- (5) A licensed addiction counselor.

s. "Neglect" includes failure to carry out resident services as directed or ordered by the physician or other authorized personnel, failure to give proper attention to residents, failure to carry out as through careless oversight.

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

~~r~~ u. "Outpatient facility" (including ambulatory surgical centers - excluding physician's clinic) means a facility located in or apart from a hospital, providing community service for the diagnosis or diagnosis and treatment of ambulatory patients in need of physical or mental care:

- (1) Which is operated in connection with a hospital;
- (2) In which patient care is under the professional supervision of licensed physicians in various medical specialties in the state or, in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the state; or

(3) Which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which makes provision for its patients to receive a reasonably full range of diagnostic and treatment services.

v. "Transfer" means any move of the resident out of the nursing facility to another facility, hospital, any other health care facility or institutional care facility or residential facility, and the legal responsibility for the care of the resident changes from the nursing facility to the receiving facility.

4. Application for long-term care facility license general provisions.
- a. No person or entity may establish, maintain, or operate a long-term care facility without first having obtained a license. Any person or entity who owns or leases a long-term care facility and desires to maintain or operate it shall apply to the department for a license in the form prescribed and shall obtain a license before accepting residents for care or treatment.
  - b. Each long-term care facility applying for a license must be designated by a distinctive name consistent with the services offered to avoid public confusion or misrepresentation. The name may not be changed without department approval.
  - c. In the case of a hospital, related institution, skilled nursing facility, or intermediate care facility, where two or more buildings are used in the care of residents, a separate license is required for each building. Separate licenses are required even though the buildings are operated under the same management.
  - d. Every license application must be notarized and signed by an authorized corporate officer, general partner, or sole proprietor of the long-term care facility, as appropriate.
  - e. Upon receipt of a completed license application, the department shall review the long-term care facility to determine compliance with this chapter and chapter 33-07-04.1, including onsite inspections, as appropriate.
  - f. The license must be displayed in a conspicuous place. Each license is valid only in the hands of the person to whom it is issued and is not subject to sale, assignment or other transfer, voluntary or involuntary, nor is a license valid for any premises other than those for which originally issued.



- g. The department may require submission of periodic reports including, but not limited to, staffing reports, census data, statistical information, and such business records as the department may reasonably require for the performance of its licensure functions.
  - h. The holder of each license issued by the department shall surrender the license immediately upon suspension, revocation, refusal to renew, or discontinuance of the operation of the long-term care facility.
  - i. The department may summarily suspend a license pending proceedings for revocation of or refusal to renew the license in cases of deliberate or willful violation, or where the public health, safety, or welfare imperatively requires emergency action.
  - j. The department and any duly authorized representative thereof have the right to enter upon and into the premises of any long-term care facility in order to determine the state of compliance with North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1 and initially identify themselves to the person in charge of the long-term care facility at the time.
  - k. Any long-term care facility which advertises or holds itself out to the public as having a special care unit for provision of care to people afflicted with alzheimer's or related disorders shall request their special care unit be licensed. Such long-term care facilities shall comply with the provisions of this chapter and chapter 33-07-04.1 as well as the requirements of section 33-07-03.1-21. The long-term care facility's license to operate shall identify provision of a special care unit.
  - l. Long-term care facilities wishing to install restricting devices on exterior doors that are not part of a special care unit must have department approval and shall comply with subsection 2 of section 33-07-04.1-20 except that the main public access doors to a long-term care facility may not be equipped with restricting devices.
5. Application for an initial long-term care facility license. An application for an initial license must include the following information:
- a. Bylaws and articles of incorporation or partnership agreement, as appropriate, must accompany the initial application. Changes must be reported to the department within thirty days of occurrence.

- b. If a partnership, the name, address, and ownership share (expressed as a percentage), and legal status (general or limited) of each partner.
- c. If a corporation, the address, and ownership share of each shareholder who, directly or indirectly, owns or controls five percent or more of the shares of the corporation, and the name, address, and corporate title of each officer and director. In addition, copies of all documents of incorporation filed with the North Dakota secretary of state must be filed with the department.
- d. If a sole proprietorship or any form of business entity, the name and address, title, and ownership share (expressed as a percentage) of each person with a financial interest therein, and the name, address, and title of every person who controls, directs, or operates the business entity.
- e. If the applicant is the lessee of the long-term care facility, it shall furnish the information required for an initial license for itself and the lessor. A copy of the relevant lease must be submitted to the department.
- f. The applicant's legal name and other names under which it does business.
- g. Each applicant shall furnish to the department a signed and notarized statement at the time of initial application, describing and dating every proceeding in the United States within five years of the date of application, in which the applicant was involved, the result of which was a limitation upon or a suspension, revocation, or refusal to grant or renew a long-term care facility license, certification for medicaid or medicare, or contract for participation in medicaid or medicare.
- h. Each applicant shall furnish a signed and notarized statement to the department at the time of initial application, describing every criminal proceeding within five years of the date of the application in which the licensee or any of its shareholders owning an interest of five percent or more, officers, directors, partners, or other controlling or managing persons, has been convicted, or nolo contendere plea accepted, of a criminal offense related to the operation, management, or ownership of a long-term care facility.
- i. Each applicant shall furnish to the department the information required for an initial license with respect to any management company with which it contracts for management services for the long-term care facility.

- j. The department may not approve an application for an initial license unless:
  - (1) The application and all required attachments and statements submitted by the applicant meet the requirements of this chapter and chapter 33-07-04.1.
  - (2) The department has conducted an inspection or investigation of the long-term care facility to determine compliance with this chapter and chapter 33-07-04.1.
  - (3) The department has conducted an investigation of the fitness of the applicant. In the determination of this fitness, the department shall consider the following:
    - (a) Whether the applicant has legal capacity demonstrated by such documents as articles of incorporation to provide the services for which the license is sought.
    - (b) Whether financial resources and sources of revenue for the specific long-term care facility of the applicant appear adequate to provide staff, services, and the physical environment sufficient to comply with North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1.
    - (c) Whether a substantially consistent and adequate level of care, as measured by compliance with this chapter and chapter 33-07-04.1 and other pertinent evidence, is being or was rendered by the applicant during the five-year period prior to the date of application in each institution in which the applicant exercised ownership, management, or operational functions.
- 6. Application for license renewal. The licensee shall submit a completed application to the department. The department may require reports including, but not limited to, staffing reports, census data, statistical information, and such business records as the department may reasonably require for the performance of its licensure functions.
- 7. Provisional license.
  - a. If the long-term care facility fails to conform to the requirements of North Dakota Century Code chapter 23-16 and this chapter and chapter 33-07-04.1, the department may refuse to issue a license, but may issue a provisional license to allow the long-term care facility to comply

with licensing requirements, if the licensee makes a substantial good faith attempt to comply with such requirements and requires time to effect compliance.

- b. The provisional license is valid for ninety days.
  - c. The provisional license may be renewed once, if the licensee demonstrates to the department that it has made further substantial progress towards compliance, and can effect compliance within the following ninety days.
  - d. Before determining whether to issue a permanent license to a provisionally licensed long-term care facility, the department shall conduct a survey or such other investigation as it deems necessary to determine that the long-term care facility meets the requirements for licensure.
8. Change or modification of license. The holder of a license shall notify the department in writing thirty days in advance of any of the following changes:
- a. In the case of a partnership, transfer of ownership includes dissolution of the partnership and conversion thereof into any other entity or the removal, addition, or substitution of an individual or other entity for a general partner.
  - b. Transfer of ownership of a sole proprietorship (any business owned by a single individual) includes transfer of title and property to another person.
  - c. Transfer of ownership of a corporation does not, in itself, include transfer of corporate stock or merger of one or more corporations with the licensee surviving. Transfer of ownership of a corporation includes consolidation of two or more corporations resulting in the creation of a new corporate entity and formation of a corporation from a partnership or a sole proprietorship.
  - d. Transfer of operating rights of the licensee includes a lease of the long-term care facility where the lessor retains no control of the operation or management of the long-term care facility and where the lessor is paid by a contract which specifies the amount of the payment.
  - e. Change in bed capacity.
  - f. Change in levels of long-term care services.
  - g. Change in name of long-term care facility.
  - h. Change of administrator.

History: Effective December 1, 1986; amended effective August 1, 1989; October 1, 1989; February 1, 1992.  
General Authority: NDCC 23-01-11, 23-01-03, ~~28-32-02~~  
28-32-03  
Law Implemented: NDCC 23-01-11, 23-16-01, ~~28-32-02~~

33-07-03.1-37. Authorized reasons for involuntary transfer and discharge in nursing facilities.

1. Medical and welfare reasons. There are medical reasons, or other reasons affecting the resident's welfare or the welfare of other residents; and one or more of the following situations exist:
  - a. A physician states in writing that the resident's physical or mental condition justifies the transfer or discharge and documents the reasons therefore; and in cases involving a mental condition or behavioral problem, the behavior of the resident creates a serious and immediate threat to the resident or to other residents or persons in the facility and all reasonable alternatives to transfer or discharge (consistent with the attending physician's orders) have been attempted and documented in the resident's medical record.
  - b. The resident has a medical emergency as determined by the physician.
  - c. The resident has been accepted by a facility for the purpose of receiving specialized services, and has, in the physician's written opinion, fully benefited from those services or can no longer benefit from those services. The purpose of the admission and the expected length of stay must have been agreed to in writing by the resident or the person with legal status to act on behalf of the resident, prior to admission.
  - d. The department or the state fire marshal states in writing that the life or safety of the resident (or other persons in the facility) justifies the transfer or discharge.
  - e. Governmental action results in revocation, suspension, or the nonrenewal of a facility's license, or governmental action to decertify from participation in medicare or medicaid which results in canceling or declining to renew a provider agreement because of the facility's failure to meet statutory or regulatory requirements for the facility.
  - f. The nursing facility intends to terminate all operation and has established to the satisfaction of the department that all necessary transfers and discharges can be



accomplished without substantial risk or mortality or morbidity to any resident in the facility.

2. Nonpayment reasons. There is a nonpayment of facility charges for the resident.

History: Effective February 1, 1992.

General Authority: NDCC 23-01-03, 23-01-11, 28-32-02

Law Implemented: NDCC 23-01-11, 23-16-01

33-07-03.1-38. Notice. Notice is provided to the resident or person eligible to provide informed consent to act on behalf of the resident thirty days prior to the date of the anticipated transfer or discharge unless the transfer or discharge was necessitated by a medical emergency.

History: Effective February 1, 1992.

General Authority: 23-01-03, 23-01-11, 28-32-02

Law Implemented: 23-01-11, 23-16-01

33-07-03.1-39. Appeal process for transfer and discharge in nursing facilities.

1. A resident or person eligible to give informed consent to act on behalf of the resident, who is dissatisfied with a decision regarding transfer or discharge from the facility, may contact the department per telephone to give notice of appeal and begin the appeal process.
2. After telephone notice to the department requesting an appeal, the notice of appeal must be followed up in writing by the resident or person with legal status to act on behalf of the resident and may be mailed or delivered with the accompanying information to the state department of health and consolidated laboratories, division of health facilities, state capitol, Bismarck, North Dakota 58505.
3. All notices of appeal must be made to this address before five p.m. on the fifth day after the date of the determination and notice of transfer or discharge has been made by the facility. The following information may be included with the notice of appeal or collected per telephone by the department:
  - a. The notice received from the facility advising the resident of the facility's decision specific to a transfer or discharge.
  - b. The disputed areas specific to the transfer or discharge and the reason or basis in fact for the dispute.

- c. The name, address, and telephone number of the person upon whom all notices regarding the appeal shall be served.
- d. Other information or documentation as requested from the facility. To enable completion of the appeal process for transfer and discharge within a thirty-day timeframe, all information requested from the facility must be supplied to the department within three working days of the request.
4. Upon collection of the necessary information, the department will notify the state ombudsman or protection and advocacy services for appeals involving persons with a primary diagnosis of mental illness or mental retardation.
5. The department will review the case and notify appropriate parties, including the resident or person with legal status to act on behalf of the resident, the facility administrator, other individuals as appropriate, with the date and time for the informal hearing.
6. The informal hearing will consist of a conference telephone call which includes the appropriate parties. Each party will be allowed to contribute information or dispute findings during the informal hearing.
7. Upon completion of the informal hearing, the department will have up to five days, but in no case shall the combined timeframe from date of reporting to date of decision exceed thirty days, to notify the appropriate parties, including at least the resident or person with legal status to act on behalf of the resident and the facility, regarding the department's final determination as to the acceptability of transfer or discharge.
8. Any further appeal is the responsibility of the resident or person with legal status to act on behalf of the resident, and is outside the department's responsibility specific to these rules. The facility in which the resident is residing at the time of the transfer or discharge appeal is responsible for informing the resident of the resident's rights as a resident in a nursing facility including those related to transfer and discharge.

History: Effective February 1, 1992.  
General Authority: 28-32-05.1  
Law Implemented: 23-01-11, 28-32-05.1

33-34-01-02. Labeling specifications.

1. Posted octane rating. The posted octane rating of a gasoline or gasohol is the mathematical average of the octane as

determined by the ASTM Research Method and the octane as determined by the ASTM Motor Method.

- a. The posted octane rating must appear on the dispenser's front panel in a type not less than one inch [2.54 centimeters] high.
- b. Only gasoline or gasohol with a posted octane rating greater than or equal to ~~ninety-two~~ ninety-one may be labeled "premium".
- c. Only gasoline or gasohol with a posted octane rating greater than or equal to ~~ninety~~ eighty-nine may be labeled "super" or "midgrade".
- d. Octane of unleaded and leaded gasoline or gasohol must be at least eighty-seven. Unleaded gasoline or gasohol means that gasoline or gasohol produced without the use of any lead additive and which contains not more than five one-hundredths grams of lead per gallon and not more than five one-thousandths grams of phosphorus per gallon. Leaded gasoline or gasohol means gasoline or gasohol produced with the use of any lead additive or which contains more than five one-hundredths grams of lead per gallon or more than five one-thousandths grams of phosphorus per gallon.

## 2. Alcohol-blended gasolines.

- a. All gasoline or gasohol sold or offered for sale containing ethanol, methanol or cosolvent alcohol, or any combination thereof, shall be labeled with the conventional name or names of the alcohol contained in the gasoline or gasohol if the gasoline or gasohol consists of one percent or more by volume of any alcohol or combinations of alcohols. The label must be on any price advertising and the dispenser's front panel in a position that is clear and conspicuous from the driver's position.
- b. Maximum percentage of methanol and cosolvent alcohol must both be conspicuously displayed or labeled if the product contains three percent or more by volume of methanol.
- c. No person may sell gasoline or gasohol in any manner, including coloring, which shall deceive, tend to deceive, or has the effect of deceiving the purchaser as to grade or type.
- d. Suppliers of alcohol-blended gasoline to retail service stations or to other resuppliers must provide to the retailer or other reseller an invoice or delivery ticket indicating to within one percentage point the specific content by volume of any alcohol contained if the gasoline

or gasohol consists of one percent or more by volume of any alcohol or combinations of alcohols. This information must be made readily available to the consumer of an alcohol-blended gasoline.

3. Gasoline grade designations. All gasolines or alcohol-blended gasolines sold or offered for sale must bear on the dispenser's front panel and on any price advertising the appropriate leaded or lead free grade designation. This label must be posted in a position that is clear and conspicuous from the driver's position.

History: Effective August 1, 1988; amended effective August 1, 1989; February 1, 1992.

General Authority: NDCC ~~19-01-02~~, ~~19-10-02~~ 19-10-10, 23-01-03(3)

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

#### NORTH DAKOTA GASOLINE SPECIFICATIONS

TEST	MOTOR			
	a	b	c	d
Water and Sediment. . . . .	None	None	None	None
Color, Dye. . . . .	e	e	e	e
Dye Content . . . . .				
Antiknock Compound g/gal. max . . . . .	i	i	i	i
Distillation Test				
10 percent Evap. degrees F. max . . . . .	122	131	140	140
50 percent Evap. degrees F. min . . . . .	170	170	170	170
50 percent Evap. degrees F. max . . . . .	230	235	240	240
90 percent Evap. degrees F. max . . . . .	365	365	365	365
End Point degrees F. max. . . . .	437	437	437	437
Residue percent max . . . . .	2	2	2	2
Vapor Pressure (Reid) lbs. max. . . . .	15.0	13.5	11.5	10.5
Vapor/Liquid Ratio				
Minimum Test Temp. degrees F. . . . .	105	116	124	124
V/L max . . . . .	20	20	20	20
Corrosion (copper strip) max. . . . .	No. 1	No. 1	No. 1	No. 1
Sulfur percent max				

(lead free gasolines) . . . . .	0.1	0.1	0.1	0.1
Sulfur percent max (leaded gasolines). . . . .	0.15	0.15	0.15	0.15
Gum, mgs/100 ml max . . . . .	5	5	5	5
Knock Value				
Motor and Research Octane No., min. .	e	e	e	e
Octane Number Lean Rating, min. . . .	---	---	---	---
Octane Number Rich Rating, min. . . .	---	---	---	---

NORTH DAKOTA GASOLINE SPECIFICATIONS (Continued)

TEST	STOVE AND LIGHT	80	AVIATION 100	100LL
Water and Sediment. . . . .	None			
Color Saybolt, min. . . . .	15			
Color, Dye. . . . .	None	Red(k)	Green	Blue
Dye Content . . . . .				
Permissible blue dye (f)				
max. mg/gal . . . . .		0.5	4.7	5.7
Permissible yellow dye (g)				
max. mg/gal . . . . .		None	5.9	None
Permissible red dye (h)				
max. mg/gal . . . . .		8.65	None	None
Antiknock Compound (j) ml/gal. max . . .	Trace	0.5(j)	4.0	2.0
Distillation Test				
10 percent Evap. degrees F. max . . .	158	167	167	167
50 percent Evap. degrees F. max . . .	266	221	221	221
90 percent Evap. degrees F. max . . .	365	275	275	275
End Point degrees F. max. . . . .	---	338	338	338
Sum of 10 and 50 degrees F				
Evap. Points degrees F. min . . . .	---	307	307	307
Distillation Recovery percent min . . .	---	97	97	97
Residue percent max . . . . .	2	1.5	1.5	1.5
Loss percent max. . . . .	---	1.5	1.5	1.5
Vapor Pressure (Reid) lbs. max. . . . .	10	7.0	7.0	7.0
min. . . . .	---	5.5	5.5	5.5
Corrosion (copper strip) max. . . . .	None	No. 1	No. 1	No. 1
Sulfur percent max (lead gasolines). . . . .	---	0.05	0.05	0.05
Potential Gum (m) (5 hr. aging gum)				
max. mg/per 100 ml. . . . .	---	6	6	6
Freezing Point degrees F. max . . . . .	---	-72	-72	-72
Net Heat of Combustion				
min. BTU/lb . . . . .	---	18.720	18.720	18.720
Visible Lead Precipitate (n)				



max. mg/100 ml. . . . .	---	3	3	3
Water Reaction. . . . .	---	Volume change not to exceed (+)(-) 2 ml		
Permissible antioxidants (o) max. lb/1000 bbl. . . . .	---	4.2	4.2	4.2
Knock Value				
Octane Number Lean Rating, min. . . .	---	80	100	100
Octane Number Rich Rating, min. . . .	---	87	+	+
Performance number, min . . . . .	---	---	130	130
Oxidation stability, Minutes min. . . .	480	---	---	---

FOOTNOTES TO NORTH DAKOTA GASOLINE SPECIFICATIONS

- a. Applies to gasoline sold during the months of January, February, March, November, and December.
- b. Applies to gasoline sold during the months of March, April, October, and November.
- c. Applies to gasoline sold during the months of April, May, June, September, and October.
- d. Applies to gasoline sold during the months of May, June, July, August, and September.
- e. The minimum octane for premium gasoline shall be ~~92~~ 91 as determined by the sum of the Research Method plus the Motor Method all divided by two  $((R+M)/2)$ . The minimum octane for super or midgrade gasoline shall be ~~90~~ 89 as determined by the sum of the Research Method plus the Motor Method all divided by two  $((R+M)/2)$ . The minimum octane for leaded **regular gasoline shall be 88 as determined by the sum of the Research Method plus the Motor Method all divided by two  $((R+M)/2)$ .** The minimum octane for **and** unleaded **regular** gasoline shall be 87 as determined by the sum of the Research Method plus the Motor Method all divided by two  $((R+M)/2)$ . No person shall sell gasoline in any manner, including coloring, which shall deceive, tend to deceive, or has the effect of deceiving the purchaser as to grade or type.
- f. The only blue dye which shall be present in the finished gasoline shall be essentially 1, 4-dialkylaminoantraquinone.
- g. The only yellow dye which shall be present in the finished gasoline shall be essentially p-diethylaminoazobenzene (Color Index No. 11020).

- h. The only red dye which shall be present in the finished gasoline shall be essentially methyl derivatives of ~~azobenzene-4-azo-2-naphthol~~ azobenzene-4-azo-2-naphthol (methyl derivatives of Color Index No. 26105) or alkyl derivatives of azobenzene-4-azo-2-naphthol.
- i. The lead content of gasoline shall be in accordance with environmental protection agency requirements.
- j. The tetraethyllead shall be added in the form of an aviation antiknock mixture containing not less than 61 percent by weight of tetraethyllead and sufficient ethylene dibromide to provide two bromine atoms per atom of lead. The balance shall contain no added ingredients other than kerosene, and approved inhibitors, and blue dye, as specified, herein.
- k. If mutually agreed upon between purchaser and supplier, Grade 80 may be required to be free from tetraethyllead. In such case the fuel shall not contain any dye and color shall not be darker than +20 Saybolt.
- l. Vapor pressure shall follow the seasonal requirements for regular and premium gasoline.
- m. If mutually agreed upon between purchaser and supplier, aviation gasoline may be required to meet a sixteen-hour aging gum test instead of the five-hour aging gum test. In some cases the gum content shall not exceed 10 mg per 100 ml and the visible lead precipitate shall not exceed 4 mg per 100 ml. In such fuel the permissible antioxidants shall not exceed 8.4 lb per 1000 bbl (42 gallons).
- n. The visible lead precipitate requirement applies only to leaded fuels.
- o. Permissible antioxidants are as follows:

N,N'-diisopropyl-para-phenylenediamine  
N,N' di-secondary-butyl-para-phenylenediamine  
2,4-dimethyl-6-tertiary-butylphenol  
2,6-ditertiary-butyl-4-methylphenol  
2,6-ditertiary butylphenol

Mixed tertiary butylphenols, composition:

75 percent minimum 2,6 ditertiary butylphenol plus 25 percent max. tertiary and tritertiary butylphenols.

NORTH DAKOTA HEATING OIL SPECIFICATIONS<sup>a</sup>

	No. 1	No. 2	No. 4 (Light)	No. 4	No. 5 (Light)	No. 5 (Heavy)	No. 6
	A distillate oil intended for vaporizing pot-type burners and other burners requiring this grade of fuel	A distillate oil for general purpose heating for use in burners not requiring No. 1 fuel oil	Preheating not usually required for handling or burning	Preheating not usually required for handling or burning	Preheating may be required depending on climate and equipment	Preheating may be required for burning and, in cold climates may be required for handling	Preheating required for handling and burning
Corrosion (Copper Strip) Maximum	No. 3	No. 3					
Flash Point (Tag closed tester) °F Minimum	100	100	100	130	130	130	140
Pour Point °F Maximum	0	20 <sup>b</sup>	20	20			
Water and sediment percent maximum	0.05	0.05	0.50	0.50	1.00	1.00	2.00
Carbon Residue (On 10% Residue) percent maximum	0.15	0.35					
Ash percent maximum			0.05	0.10	0.15	0.15	
Distillation Test:							
10% Recovered °F maximum	420	c					
90% Recovered °F maximum	550	640					
90% Recovered °F minimum		540 <sup>d</sup>					
Viscosity at 100°F seconds Saybolt Universal, Minimum Maximum		32.6 37.8	32.6 45	45 125	>125 300	>300 900	>900 9000
Viscosity at 122°F Saybolt Furol Minimum Maximum						25 40	>45 300
Viscosity at 100°F Kinematic Centistokes Minimum Maximum	1.4 2.2	2.0 <sup>d</sup> 3.6	2.0 5.8	5.8 26.4	> 26.4 65	> 65 194	
Viscosity at 104°F Kinematic Centistokes Minimum Maximum						42 81	92 638
Gravity °API Minimum	35	30	30 max				
Sulphur, percent maximum	0.5	0.5					

a. It is the intent of these classifications that failure to meet any requirement of a given grade does not automatically place an oil in the next lower unless in fact it meets all requirements of the lower grade.

b. Shall not exceed 0° whenever required by conditions of storage or use.

c. The 10% point shall be 440°F. maximum for use in other than atomizing burners.

d. When Pour Point less than 0°F. is specified, the minimum viscosity shall be 1.8cs. (32.0 seconds Saybolt Universal) and minimum 90% point shall be waived.

NORTH DAKOTA DIESEL FUEL SPECIFICATION

Grade of Diesel Fuel Oil	Flash Point deg Fahr	Cloud Point, deg Fahr	Meter and Sedi- ment, percent by volume	Carbon Residue on 10% Residue, percent	Ash percent by weight	Distillation Temperatures Degrees Fahrenheit		Viscosity at 100°F. Kinematic, centistoke (or Saybolt Universal, sec.)		Sulphur percent by weight	Copper Strip Corrosion	Cetane Number c
	Min.	Max.	Max.	Max.	Max.	Min.	Max.	Min.	Max.	Max.	Max.	Min.
No. 1-D A volatile distillate fuel oil for engines in service requiring frequent speed and load changes.	100	a	0.05	0.15	0.01	----	550	1.3	2.4 (34.4)	0.50	No. 3	40d
No. 2-D A distillate fuel oil of lower volatility for engines in industrial and heavy mobile service.	125	a	0.05	0.35	0.01	540b	640	1.9b (32.6)	4.1 (40.1)	0.50	No. 3	40d
No. 4-D A fuel oil for low and medium speed engines.	130	a	0.50	---	0.10	----	----	5.5 (45)	24.0 (125)	2.0	--	30d

- a. It is unrealistic to specify low temperature properties that will ensure satisfactory operation on a broad basis. Satisfactory operation should be achieved in most cases if the cloud point (or wax appearance point) is specified at 6°C above the tenth percentile minimum ambient temperature for the area in which the fuel will be used. Some equipment designs use flow improver additives, fuel properties, or operations, or a combination thereof, which may allow higher or require lower cloud point fuels. Appropriate low temperature operability properties should be agreed upon between the fuel supplier and purchaser for the intended use and expected ambient temperatures.
- b. When cloud point less than 10°F is specified, the minimum viscosity shall be 1.7cs and the minimum 90 percent point shall be waived.
- c. Where cetane number by Method D613 Test for Ignition Quality of Diesel Fuels by the Cetane Method, is not available, Calculated Cetane Index may be used as an approximation. Where there is disagreement, Method D613 shall be the referee method.
- d. Low atmospheric temperatures as well as engine operation at high altitudes may require use of fuels with higher cetane ratings.



APRIL 1992

STAFF COMMENT: Chapters 33-20-17 and 33-20-18 contain all new material but are not underscored so as to improve readability.

CHAPTER 33-20-17  
SOLID WASTE MANAGEMENT PLANNING

Section  
33-20-17-01                      District Solid Waste Management Plans

33-20-17-01. District solid waste management plans.

1. The comprehensive solid waste management plans required by the Act for each solid waste management district must be developed and implemented for the following purposes:
  - a. Reduce the amount of solid waste generated.
  - b. Reuse materials.
  - c. Compost wastes such as leaves and grass clippings.
  - d. Recycle everything possible.
  - e. Recover energy from waste.
  - f. Landfill the remaining wastes.
  - g. To coordinate solid waste management among district political subdivisions.
2. At a minimum, each district solid waste management plan must contain the following plan elements:



- a. Documentation demonstrating compliance with North Dakota Century Code chapter 23-29 for formation of the district.
- b. Solid waste management goals and objectives for ten-year plan.
- c. Solid waste inventory (including special wastes, regulated infectious wastes and tires excluding regulated hazardous wastes), types, and quantities for each community and county; and a district summary.
- d. Solid waste amounts and types transported to another district or state; and the amounts, types, and sources of waste received from another district or state.
- e. Descriptions of existing solid waste collectors, service areas, routes, transfer stations, and types of service for all communities and counties served.
- f. Descriptions of existing resource recovery, waste processing, and disposal methods and facilities, existing waste minimization practices, and local markets for recoverable waste materials; assessments of the capacities of these methods, practices, and markets; and identification of potential and new resource recovery efforts and markets.
- g. Identification of current solid waste management problems, evaluate solutions, and identify a course of action to solve those problems.
- h. How the district will meet the following goals specified in the Act:
  - (1) At least a ten percent reduction in volume of municipal/solid waste deposited in landfills by 1995.
  - (2) At least a twenty percent reduction in volume of municipal/solid waste deposited in landfills by 1997.
  - (3) At least a forty percent reduction in volume of municipal/solid waste deposited in landfills by 2000.
- i. Future solid waste management issues which may require adjustments to adopted solid waste management plans.
- j. Implementation plan and schedule and a funding mechanism for the activities and strategies in the plan.
- k. Existing local ordinances and rules and a strategy for the district's compliance with the plan.

- l. Ensure and document public involvement and acceptance of the plan.
  - m. Resolution of adoption of the plan by the district.
  - n. Provision to review, amend, update, and submit solid waste management plans to the department every five years.
3. As required by the Act, the districts must submit plans to the department for approval.

History: Effective April 1, 1992.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

CHAPTER 33-20-18  
SOLID WASTE MANAGEMENT FUND

Section  
33-20-18-01                      Solid Waste Management Fund

**33-20-18-01. Solid waste management fund.**

1. Any political subdivision may apply for a loan or grant from the solid waste management fund.
2. The loan or grant application must be submitted to the department and include the following:
  - a. The political entity applying for the grant or loan.
  - b. The purpose of the grant or loan application:
    - (1) Market development.
    - (2) Waste reduction.
    - (3) Resource recovery.
    - (4) Recycling.
    - (5) Planning.
  - c. Certification by the district that the proposed project is consistent with the district solid waste management plan.
  - d. A description of the work plan, implementation procedures, and schedule.

- e. Identification of the amount of grant or loan requested and a cost analysis of the entire project.
- f. Progress reporting schedule.

History: Effective April 1, 1992.  
General Authority: NDCC 23-29-04  
Law Implemented: NDCC 23-29-04

33-24-08-10. Performance standards for new underground storage tank systems. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the underground storage tank system is used to store regulated substances, all owners and operators of new underground storage tank systems must meet the following requirements:

1. Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:
  - a. The tank is constructed of fiberglass-reinforced plastic (NOTE: The following industry codes may be used to comply with this subdivision: Underwriters Laboratory Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriters Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks.");
  - b. The tank is constructed of steel and cathodically protected in the following manner:
    - (1) The tank is coated with a suitable dielectric material;
    - (2) Field-installed cathodic protection systems are designed by a corrosion expert;
    - (3) Impressed current systems are designed to allow determination of current operating status as required in subsection 3 of section 33-24-08-21; and
    - (4) Cathodic protection systems are operated and maintained in accordance with section 33-24-08-21 or according to guidelines established by the department (NOTE: The following codes and standards may be used to comply with this subdivision: Steel Tank

Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks"; Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks"; Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids", and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids", and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems", and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".);

- c. The tank is constructed of a steel-fiberglass-reinforced-plastic composite (NOTE: The following industry codes may be used to comply with this subdivision: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks", or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks".)
  - d. The tank is constructed of metal without additional corrosion protection measures provided that:
    - (1) The tank is installed at a site that is determined by a corrosion expert not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
    - (2) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph 1 of this subdivision for the remaining life of the tank; or
  - e. The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than subdivisions a through d.
2. Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally

recognized association or independent testing laboratory as specified below:

- a. The piping is constructed of fiberglass-reinforced plastic (NOTE: The following codes and standards may be used to comply with this subdivision: Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe"; Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas"; Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors".)
- b. The piping is constructed of steel and cathodically protected in the following manner:
  - (1) The piping is coated with a suitable dielectric material;
  - (2) Field-installed cathodic protection systems are designed by a corrosion expert;
  - (3) Impressed current systems are designed to allow determination of current operating status as required in subsection 3 of section 33-24-08-21; and
  - (4) Cathodic protection systems are operated and maintained in accordance with section 33-24-08-21 or guidelines established by the department (NOTE: The following codes and standards may be used to comply with this subdivision: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems"; American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems".);
- c. The piping is constructed of metal without additional corrosion protection measures provided that:
  - (1) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
  - (2) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph 1 for the remaining life of the piping

(NOTE: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems", may be used to comply with this subdivision.);

- d. The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subdivisions a through c.

3. Spill and overflow prevention equipment.

- a. Except as provided in subdivision b, to prevent spilling and overflowing associated with product transfer to the underground storage tank system, owners and operators must use the following spill and overflow prevention equipment:

- (1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

- (2) Overflow prevention equipment that will:

- (a) Automatically shut off flow into the tank when the tank is no more than ninety-five percent full; ~~or~~

- (b) Alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level alarm; or

- (c) Restrict flow thirty minutes prior to overflowing, alert the operator with a high level alarm one minute before overflowing, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overflowing.

- b. Owners and operators are not required to use the spill and overflow prevention equipment specified in subdivision a if:

- (1) Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in paragraphs 1 and 2 of subdivision a; or



(2) The underground storage tank system is filled by transfers of no more than twenty-five gallons [94.63 liters] at one time.

4. **Installation.** All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

(NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of this subsection: American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or American National Standards Institute Standard B31.3, "Petroleum Refinery Piping", and American National Standards Institute Standard B31.4, "Liquid Petroleum Transportation Piping System".)

5. **Certification of installation.** All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with subsection 4 by providing a certification of compliance on the underground storage tank notification form in accordance with section 33-24-08-12:
- a. The installer has been certified by the tank and piping manufacturers;
  - b. The installer has been certified or licensed by the department;
  - c. The installation has been inspected and certified by a registered professional engineer with education and experience in underground storage tank system installation;
  - d. The installation has been inspected and approved by the department;
  - e. All work listed in the manufacturer's installation checklists has been completed; or
  - f. The owner and operator have complied with another method for ensuring compliance with subsection 4 that is determined by the department to be no less protective of human health and the environment.

History: Effective December 1, 1989; amended effective April 1, 1992.  
General Authority: NDCC 23-20.3-03, 23-20.3-04.1

33-24-08-12. Notification requirements.

1. Any owner who brings an underground storage tank system into use after May 8, 1986, must within thirty days of bringing such tank into use, submit, in the form prescribed in appendix I, a notice of existence of such tank system to the department.

(NOTE: Owners and operators of underground storage tank systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the designated state or local agency in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by the environmental protection agency on November 8, 1985, (50 federal register 46602) unless notice was given pursuant to section 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form contained in appendix I.)

2. Owners required to submit notices under subsection 1 must provide notices to the department for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation must file a separate notification form for each separate place of operation.
3. Notices required to be submitted under subsection 1 must provide all of the information in sections + I through + VI of the prescribed form for each tank for which notice must be given.
4. All owners and operators of new underground storage tank systems must certify in the notification form compliance with the following requirements:
  - a. Installation of tanks and piping under subsection 5 of section 33-24-08-10;
  - b. Cathodic protection of steel tanks and piping under subsections 1 and 2 of section 33-24-08-10;
  - c. Financial responsibility under sections 33-24-08-80 through 33-24-08-101; and
  - d. Release detection under sections 33-24-08-31 and 33-24-08-32.

5. Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under subsection 1. The form provided in appendix II may be used to comply with this requirement.
6. All owners and operators of new underground storage tank systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements in subsection 4 of section 33-24-08-10.

History: Effective December 1, 1989; amended effective April 1, 1992.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-30. General release detection requirements for all underground storage tank systems.

1. Owners and operators of new and existing underground storage tank systems must provide a method, or combination of methods, of release detection that:
  - a. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;
  - b. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
  - c. Meets the performance requirements in section 33-24-08-33 or 33-24-08-34, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after ~~December 22, 1990~~, the date shown in the following table corresponding with the specified method except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in ~~subsections 2, 3, and 4 of section 33-24-08-33 or subsections 1 and 2 of section 33-24-08-34~~ the corresponding section of the rule (also shown in the table) with a probability of detection (Pd) of ninety-five hundredths and a probability of false alarm (Pfa) of five hundredths.

<u>Method</u>	<u>Section</u>	<u>Date after which Pd/Pfa must be demonstrated</u>
<u>Manual Tank Gauging</u>	<u>33-24-08-33-02</u>	<u>December 22, 1990</u>

<u>Tank Tightness Testing</u>	<u>33-24-08-33-03</u>	<u>December 22, 1990</u>
<u>Automatic Tank Gauging</u>	<u>33-24-08-33-04</u>	<u>December 22, 1990</u>
<u>Automatic Line Leak Detectors</u>	<u>33-24-08-34-01</u>	<u>September 22, 1991</u>
<u>Line Tightness Testing</u>	<u>33-24-08-34-02</u>	<u>December 22, 1990</u>

2. When a release detection method operated in accordance with the performance standards in sections 33-24-08-33 and 33-24-08-34 indicates a release may have occurred, owners and operators must notify the department in accordance with sections 33-24-08-40 through 33-24-08-43.
3. Owners and operators of all underground storage tank systems must comply with the release detection requirements of this section by December twenty-second of the year listed in the following table:

Schedule for Phase-in of Release Detection

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown	RD	P			
1965-1969		P/RD			
1970-1974		P	RD		
1975-1979		P		RD	
1980-1988		P			RD
New tanks (after December 22) immediately upon installation.					

- P = Must begin release detection for all pressurized piping in accordance with subdivision a. of subsection 2. of section 33-24-08-31 ~~and subdivision d. of subsection 2. of section 33-24-08-32.~~
- RD = Must begin release detection for tanks and suction piping in accordance with subsection 1. of section 33-24-08-31, subdivision b. of subsection 2. of section 33-24-08-31, and section 33-24-08-32.

4. Any existing underground storage tank system that cannot apply a method of release detection that complies with the requirements of this section must complete the closure procedures in sections 33-24-08-60 through 33-24-08-64 by the date on which release detection is required for that underground storage tank system under subsection 3.

History: Effective December 1, 1989; amended effective April 1, 1992.  
 General Authority: NDCC 23-20.3-03, 23-20.3-04.1  
 Law Implemented: NDCC 23-20.3-04.1

33-24-08-81. Financial responsibility compliance dates. Owners of petroleum underground storage tanks are required to comply with the requirements of sections 33-24-08-80 through 33-24-08-102 by the following dates:

1. All petroleum marketing firms owning one thousand or more underground storage tanks and all other underground storage tank owners that report a tangible net worth of twenty million dollars or more to the United States securities and exchange commission, dun and bradstreet, the energy information administration, or the rural electrification administration - January 24, 1989, except that compliance with subsection 2 of section 33-24-08-84 is required by July 24, 1989.
2. All petroleum marketing firms owning one hundred to nine hundred ninety-nine underground storage tanks - October 26, 1989.
3. All petroleum marketing firms owning thirteen to ninety-nine underground storage tanks at more than one facility - April 26, ~~1990~~ 1991.
4. All petroleum underground storage tank owners not described in subsection 1, 2, or 3, ~~including~~ excluding all local government entities - ~~October 26, 1990~~ December 31, 1992.
5. All local government entities - one year from the date of promulgation by the environmental protection agency of additional mechanisms for use by local government entities to comply with financial responsibility requirements for underground storage tanks containing petroleum.

History: Effective December 1, 1989; amended effective April 1, 1992.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-82. Definitions (financial responsibility). When used in sections 33-24-08-80 through 33-24-08-102, the following terms have the meanings given below:

1. "Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action or compensation for bodily injury or property damage, or both, neither expected nor intended by the tank owner or operator.
2. "Bodily injury" has the meaning given to this term by applicable state law; however, this term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.
3. "Controlling interest" means direct ownership of at least fifty percent of the voting stock of another entity.
4. "Department" means the North Dakota state department of health and consolidated laboratories.

5. "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:
  - a. A 10-K report submitted to the securities and exchange commission;
  - b. An annual report of tangible net worth submitted to Dun and Bradstreet; or
  - c. Annual reports submitted to the energy information administration or the rural electrification administration. "Financial reporting year" may thus comprise a fiscal-year or a calendar-year period.
6. "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:
  - a. By the environmental protection agency or a state to require corrective action or to recover the costs of corrective action;
  - b. By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
  - c. By any person to enforce the terms of a financial assurance mechanism.
7. "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank. (NOTE: This definition is intended to assist in the understanding of these rules and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence".)
8. "Owner or operator", when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.
9. "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.
10. "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with underground storage tanks as well as petroleum marketing facilities are considered to be petroleum marketing firms.



11. "Property damage" has the meaning given this term by applicable state law. This term does not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.
12. "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in sections 33-24-08-85 through 33-24-08-93, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.
13. "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.
14. "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.
15. "Termination" under subdivisions a and b of subsection 2 of section 33-24-08-87 means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

History: Effective December 1, 1989; amended effective April 1, 1992.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

### 33-24-08-87. Insurance and risk retention group coverage.

1. An owner or operator may satisfy the requirements of section 33-24-08-83 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

2. Each insurance policy must be amended by an endorsement worded as specified in subdivision a, or evidenced by a certificate of insurance worded as specified in subdivision b, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

a. Endorsement

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: \_\_\_\_\_

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]

Address of [Insurer or Risk Retention Group]:

Name of Insured: \_\_\_\_\_

Address of Insured: \_\_\_\_\_

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 33-24-08-12, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate"

limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections a through e of this paragraph 2 are hereby amended to conform with subsections a through e;
  - a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.
  - b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 33-24-08-85 through 33-24-08-92.
  - c. Whenever requested by the [department], the ["Insurer" or "Group"] agrees to furnish to the [department] a signed duplicate original of the policy and all endorsements.
  - d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"]; except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy.} The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in subdivision a of subsection 2 of section 33-24-08-87 and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]  
[Name of person signing]  
[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]  
[Address of Representative]

b. Certificate of insurance

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: \_\_\_\_\_

Endorsement (if applicable) \_\_\_\_\_

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]

Address of [Insurer or Risk Retention Group]:

Name of Insured: \_\_\_\_\_

Address of Insured: \_\_\_\_\_

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Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 33-24-08-12, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in paragraph 1:
  - a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.



- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in sections 33-24-08-85 through 33-24-08-92.
- c. Whenever requested by the [department], the ["Insurer" or "Group"] agrees to furnish to the [department] a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for nonpayment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty days after a copy of such written notice is received by the insured. Cancellation for nonpayment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the {"Insurer" or "Group"} within six months of the effective date of the cancellation or other termination of the policy.} The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive data or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive data, if applicable, and prior to such policy renewal or termination data. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]



I hereby certify that the wording of this instrument is identical to the wording in subdivision b of subsection 2 of section 33-24-08-87 and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

3. Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

History: Effective December 1, 1989; amended effective April 1, 1992.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

### 33-24-08-93. Standby trust fund.

1. An owner or operator using any one of the mechanisms authorized by section 33-24-08-86, 33-24-08-88, or 33-24-08-89 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.
2. The following apply:
  - a. The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### Trust Agreement

Trust agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate trustee], [insert "Incorporated in the state of \_\_\_\_\_" or "a national bank"], the "Trustee".

¶Whereas, the department has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and

third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank ~~(This paragraph is only applicable to the standby trust agreement.)~~. The attached schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

[Whereas, the Grantor has elected to establish [insert either "a guarantee", "surety bond", or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

[Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

#### Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

#### Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

#### Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of [the department]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided [The Fund is established initially as a standby to receive payments and shall not consist of any property.]. Payments made by the provider of financial assurance pursuant to the [department's] instruction are transferred to the Trustee and are referred to as the Fund,

together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the [department].

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"].

The Trustee shall make payments from the Fund as [the department] shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third-parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 33-24-08-83.

The Trustee shall reimburse the Grantor, or other persons as specified by the [department], from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the [department] shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the [department] specifies in writing. Upon refund, such

funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge the duties of the Trustee with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

#### Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

#### Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

#### Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

#### Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The



Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the [department] to the Trustee shall be in writing, signed by the [department], and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the [department] hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the [department], except as provided for herein.

#### Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and [the department] if the Grantor ceases to exist.

#### Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the [department], if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

#### Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the [department] issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

#### Section 17. Choice of Law.

This agreement shall be administered, construed, and enforced according to the laws of the state of [insert name of state], or the Comptroller of the Currency in the case of National Association of banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in subdivision a of subsection 2 of section 33-24-08-93 as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of the Witness]

[Title]

[Seal]

- b. The standby trust agreement, or trust agreement, must be accompanied by a formal certification of acknowledgment similar to the following.

State of \_\_\_\_\_  
County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that the owner or operator resides at [address], that the owner or operator is [title] of [corporation], the corporation described in and which executed the above instrument; that the owner or operator knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that the owner or operator signed their name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

3. The department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial

assurance if the department determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

4. An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this section.

History: Effective December 1, 1989; amended effective April 1, 1992.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

33-24-08-95. Cancellation or nonrenewal by provider of financial assurance.

1. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.
  - a. Termination of a guarantee, a surety bond, or a letter of credit may not occur until one hundred twenty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
  - b. ~~Termination of insurance, risk retention group coverage, or state-funded assurance may not occur until sixty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.~~ Termination of insurance or risk retention group coverage, except for nonpayment or misrepresentation by the insured, or state-funded assurance may not occur until sixty days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of ten days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
2. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 33-24-08-96, the owner or operator must obtain alternate coverage as specified in this section within sixty days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within sixty days after receipt of the notice of termination, the owner or operator must notify the department of such failure and submit:

- a. The name and address of the provider of financial assurance;
- b. The effective date of termination; and
- c. The evidence of the financial assistance mechanism subject to the termination maintained in accordance with subsection 2 of section 33-24-08-97.

History: Effective December 1, 1989; amended effective April 1, 1992.

General Authority: NDCC 23-20.3-03, 23-20.3-04.1

Law Implemented: NDCC 23-20.3-04.1

STAFF COMMENT: Article 33-36 contains all new material but is not underscored so as to improve readability.

### ARTICLE 33-36

#### EMERGENCY MEDICAL SERVICES PERSONNEL TRAINING, TESTING, AND CERTIFICATION

Chapter  
33-36-01

Emergency Medical Services Personnel  
Training, Testing, and Certification

#### CHAPTER 33-36-01 EMERGENCY MEDICAL SERVICES PERSONNEL TRAINING, TESTING, AND CERTIFICATION

Section

33-36-01-01	Definitions
33-36-01-02	Emergency Medical Services Training Programs
33-36-01-03	Training, Testing, and Certification Standards for Primary Certification Programs
33-36-01-04	Training, Testing, and Certification Standards for Certification Scope Enhancement Programs
33-36-01-05	Revocation of Certification
33-36-01-06	Revocation Process
33-36-01-07	Hearing

33-36-01-01. Definitions. Words defined in North Dakota Century Code chapter 23-27 have the same meaning in this chapter.

1. "Certification scope enhancement programs" means those certification programs which add additional skills to or

refresh existing skills obtained from the primary certification programs.

2. "Department" means the state department of health and consolidated laboratories.
3. "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.
4. "National registry" means the national registry of emergency medical technicians located in Columbus, Ohio.
5. "Prehospital emergency medical services personnel" are those persons certified under the programs defined in this chapter.
6. "Primary certification programs" means those certification programs which integrate a broad base of skills necessary to perform within a level of the emergency medical services system as determined by the department.

History: Effective April 1, 1992.  
General Authority: NDCC 23-27-04.3  
Law Implemented: NDCC 23-27-04.3

33-36-01-02. Emergency medical services training programs. The department shall establish training, testing, and certification requirements for the following emergency medical services programs:

1. Primary certification programs:
  - a. First responder;
  - b. Emergency care technician;
  - c. Emergency medical technician-basic;
  - d. Emergency medical technician-intermediate; and
  - e. Emergency medical technician-paramedic.
2. Certification scope enhancement programs:
  - a. Emergency medical services instructor;
  - b. Automatic defibrillation;
  - c. Manual defibrillation;
  - d. Intravenous maintenance;
  - e. Flight medical crew;

- f. Automobile extrication;
- g. Automobile extrication instructor;
- h. First responder-refresher;
- i. Emergency medical technician-basic refresher;
- j. Emergency medical technician-intermediate refresher; and
- k. Emergency medical technician-paramedic refresher.

History: Effective April 1, 1992.  
General Authority: NDCC 23-27-04.3  
Law Implemented: NDCC 23-27-04.3

33-36-01-03. Training, testing, and certification standards for primary certification programs. The department shall authorize the conduct of courses, the testing of students, and the certification of personnel when application has been made on forms provided and in the manner specified by the department contingent on the following requirements:

1. First responder:
  - a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Services: First Responder Training Course".
  - b. Textbooks. The department shall publish a list of approved textbooks.
  - c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as a first responder or its equivalent.
  - d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all stations of a practical examination conducted by the course coordinator. The practical examination must consist of no less than one medical, one cardiopulmonary resuscitation, and one trauma station.
  - e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until December thirty-first of the following year. Persons passing the testing process



between July first and December thirty-first must be certified until December thirty-first of the second year.

f. Recertification. The department shall recertify for a two-year period expiring on December thirty-first those persons who have met one of the following requirements:

(1) Completion of sixteen hour North Dakota first responder refresher course.

(2) Completion of a twenty-four hour emergency medical technician-basic refresher course.

(3) Audit lessons two, three, four, five, seven, ten, fourteen, and twenty-one of an emergency medical technician-basic course consisting of twenty-five hours.

2. Emergency care technician and emergency medical technician-basic:

a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Technician-Ambulance National Standard Curriculum", in the edition specified by the department.

b. Textbooks. The department shall publish a list of approved textbooks.

c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency care technician or its equivalent.

d. Testing. Students must pass the national registry's written examination and a practical examination provided by the department which meets the national registry's standards in order to be eligible for certification. The content of the practical examination must be determined by the department, and the department shall establish policies regarding retesting of failed written and practical examinations consistent with those established by the national registry.

e. Emergency care technician initial certification. The department shall issue initial certification as an emergency care technician to persons under the age of eighteen who have completed an authorized course and passed the testing process or those who have requested reciprocity from another state with equivalent training. Persons passing the testing process between January first and June thirtieth must be certified until December

thirty-first of the following year. Persons passing the testing process between July first and December thirty-first must be certified until December thirty-first of the second year.

- f. Emergency medical technician-basic initial certification. A person eighteen years of age or older who has completed an authorized course and passed the testing process shall obtain certification from the national registry.
  - g. Recertification of emergency care technicians. The department shall recertify for a two-year period expiring on December thirty-first those persons who have met all of the following requirements:
    - (1) Completion of a twenty-four hour emergency medical technician-basic refresher course which includes the American heart association's cardiopulmonary resuscitation course c refresher or its equivalent, answering correctly at least seventy percent of the questions on a written examination provided by the department and passing a local practical examination meeting the department's requirements.
    - (2) Completion of forty-eight hours of continuing education as approved by the department or the national registry.
  - h. Recertification of emergency medical technicians-basic. Emergency medical technician-basics must be recertified by the national registry recertification policies.
3. Emergency medical technician-intermediate:
- a. Student prerequisite certification. Students must be certified as an emergency care technician or its equivalent prior to testing.
  - b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Technician-Intermediate National Standard Curriculum", in the edition specified by the department.
  - c. Textbooks. The department shall publish a list of approved textbooks.
  - d. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-intermediate or its equivalent.

- e. Testing. Students must pass the written and practical examinations as provided by the national registry and administered by the department in order to be eligible for certification.
- f. Emergency medical technician-intermediate initial certification. A person eighteen years of age or older who has completed an authorized course and passed the testing process shall obtain certification from the national registry.
- g. Recertification of emergency medical technician-intermediate. Emergency medical technician-intermediate must be recertified by the national registry recertification policies.

4. Emergency medical technician-paramedic:

- a. Student prerequisite certification. Students must be certified as an emergency care technician or its equivalent prior to testing.
- b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Technician-Paramedic National Standard Curriculum", in the edition specified by the department.
- c. Textbooks. The department shall publish a list of approved textbooks.
- d. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-paramedic or its equivalent.
- e. Field internship. Courses must be required to provide a minimum of three hundred hours of field internship experience with a licensed advanced life support ambulance service.
- f. Testing. A student must pass the written and practical examinations as provided by the national registry and administered by the department in order to be eligible for certification.
- g. Emergency medical technician-paramedic initial certification. A person eighteen years of age or older who has completed an authorized course and passed the testing process shall obtain certification from the national registry.

- h. Recertification of emergency medical technician-paramedic. An emergency medical technician-paramedic must be recertified by the national registry recertification policies.

History: Effective April 1, 1992.  
General Authority: NDCC 23-27-04.3  
Law Implemented: NDCC 23-27-04.3

33-36-01-04. Training, testing, and certification standards for certification scope enhancement programs. The department shall authorize the conduct of courses, the testing of students, and the certification of personnel when application has been made on forms provided and in the manner specified by the department contingent on the following requirements:

1. Automatic defibrillation:
  - a. Student prerequisite certification. Students must be certified as a first responder or its equivalent, with oxygen and suction training.
  - b. Curriculum. The course curriculum must be that issued by the department entitled "Automatic Defibrillator: Coordinator Handbook".
  - c. Textbooks. The textbook must be chapter twenty from the advanced cardiac life support textbook published by the American heart association.
  - d. Course instructor. The course instructor must be a physician, registered nurse, or paramedic and must be currently certified by the American heart association in advanced cardiac life support.
  - e. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination conducted by the department. The practical examination must consist of the automatic defibrillation of a simulated cardiac arrest patient.
  - f. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. The certification must expire one year from the date the practical and written tests were passed.
  - g. Recertification. The department shall recertify for a one-year period those persons who have met all of the following requirements:

- (1) Quarterly review of the automatic defibrillation process conducted by a person trained at least to the emergency care technician level and certified in automatic defibrillation.
- (2) Demonstration of skill competence to the squad's medical director five to seven months after becoming certified.
- (3) Successful completion of the department's written and practical examinations.

2. Manual defibrillation:

- a. Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "Manual Defibrillator/Monitor Curriculum".
- c. Course instructor. The course instructor must be a physician, registered nurse, or paramedic and must be currently certified by the American heart association in advanced cardiac life support.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination conducted by the department. The practical examination must consist of the manual defibrillation of a simulated cardiac arrest patient and correctly identify eleven out of thirteen static cardiac strips.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. The certification must expire one year from the date the practical and written tests were passed.
- f. Recertification. The department shall recertify for a one-year period those persons who have met all of the following requirements:
  - (1) Quarterly review of the manual defibrillation process conducted by a person trained at least to the emergency care technician level and certified in manual defibrillation.

- (2) Demonstration of skill competence to the squad's medical director five to seven months after becoming certified.
- (3) Successful completion of the department's written and practical examinations.

3. Intravenous therapy maintenance:

- a. Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "EMT/ECT IV Maintenance Module".
- c. Course instructor. The course instructor must be an emergency medical technician-intermediate or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination provided by the department. The practical examination must consist of performing intravenous maintenance skills on a manikin.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until December thirty-first of that year. Persons passing the testing process between July first and December thirty-first must be certified until December thirty-first of the following year.
- f. Recertification. The department shall recertify for a one-year period those persons who have completed the department's one hour refresher course, written examination, and practical examination.

4. Flight medical crew:

- a. Student prerequisite certification. An individual must be enrolled as an emergency medical technician-paramedic student or certified as an emergency medical technician-paramedic or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "Air Medical Crew National Standard Curriculum", in the edition specified by the department.

- c. Course instructor. The department shall provide the course instructor.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course. A person who has completed an authorized course between January first and June thirtieth must be certified until December thirty-first of the following year. Persons passing the testing process between July first and December thirty-first must be certified until December thirty-first of the second year.
- e. Recertification. The department shall recertify for a two-year period those persons who have completed the department's four hour refresher course or complete eight hours of air medical related education.

5. Automobile extrication:

- a. Curriculum. The course curriculum must be that issued by transportation rescue consultants, inc. entitled "The Carbusters: Principles, Techniques and Handtools".
- b. Course instructor. The course instructor must be certified by the department as an automobile extrication instructor.
- c. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until December thirty-first of the following year. Persons passing the testing process between July first and December thirty-first must be certified until December thirty-first of the second year.
- e. Recertification. The department shall recertify for a two-year period those persons who complete the department's six hour refresher course or audit eight hours of an initial course and pass the department's written examination.

6. Automobile extrication instructor:

- a. Curriculum. The course curriculum must be that issued by transportation rescue consultants, inc. entitled "The Carbusters: Principles, Techniques and Handtools".



- b. Course instructor. The department shall provide the course instructor.
  - c. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department.
  - d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until December thirty-first of the following year. Persons passing the testing process between July first and December thirty-first must be certified until December thirty-first of the second year.
  - e. Recertification. The department shall recertify for a two-year period those persons who have satisfactorily conducted an automobile extrication course or have audited eight hours of an automobile extrication instructor course.
7. Emergency medical services instructor:
- a. Student prerequisite. An individual must be at least eighteen years of age in order to be certified.
  - b. Curriculum. The course curriculum must consist of thirty-two hours of training based on the curriculum issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Services Instructor Training Program, A National Standard Curriculum", in the edition specified by the department. The department shall determine which training topics must be extracted from the curriculum to comprise the thirty-two hours of training.
  - c. Course instructor. The course instructor must be provided by the department.
  - d. Initial certification. The curriculum must be divided into two 16-hour blocks of instruction and the department shall issue initial certification to persons for each sixteen-hour block. Persons completing the first block of instruction between January first and June thirtieth must be certified until December thirty-first of that year. Persons completing the first block of instruction between July first and December thirty-first must be certified until December thirty-first of the following year. Persons completing the second block of instruction must be certified for an additional year beyond the expiration date of the first block. The department may determine equivalencies for either block of instruction.

- e. Recertification. The department shall recertify for a two-year period those persons who have completed the department's eight hour refresher course or have audited eight hours of an initial emergency medical services instructor course.
8. First responder refresher:
- a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "First Responder Refresher Training Program National Standard Curriculum", in the edition specified by the department.
  - b. Textbooks. The department shall publish a list of approved textbooks.
  - c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as a first responder or its equivalent.
  - d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the course coordinator and pass all stations of a practical examination conducted by the course coordinator. The practical examination must consist of no less than one medical, one cardiopulmonary resuscitation, and one trauma station.
9. Emergency medical technician-basic refresher:
- a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "EMT Ambulance Refresher Training Program National Standard Curriculum", in the edition specified by the department.
  - b. Textbooks. The department shall publish a list of approved textbooks.
  - c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency care technician or its equivalent.
  - d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all stations of a practical examination conducted by the course coordinator.
10. Emergency medical technician-intermediate refresher:

- a. Curriculum. The course coordinator shall select topics consisting of twelve hours of training from the curriculum issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Technician-Intermediate National Standard Curriculum", in the edition specified by the department.
  - b. Textbooks. The department shall publish a list of approved textbooks.
  - c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-intermediate or its equivalent.
11. Emergency medical technician-paramedic refresher:
- a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "EMT Paramedic Refresher Training Program National Standard Curriculum", in the edition specified by the department.
  - b. Textbooks. The department shall publish a list of approved textbooks.
  - c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-paramedic or its equivalent.

History: Effective April 1, 1992.  
General Authority: NDCC 23-27-04.3  
Law Implemented: NDCC 23-27-04.3

33-36-01-05. Revocation of certification. The department may revoke the certification of a person who:

1. Has represented themselves to others as a physician, nurse, or health care provider other than the highest level for which they are certified.
2. Is incapable of properly performing the skills for which the individual has been certified.
3. Performs a skill which exceeds those allowed by the individual's level of certification.

4. Has been convicted of a felony for an offense which has a direct bearing upon the person's ability to serve the public in a capacity certified by this chapter.
5. Has been found by a court of law to be mentally incompetent.

History: Effective April 1, 1992.  
General Authority: NDCC 23-27-04.3  
Law Implemented: NDCC 23-27-04.3

33-36-01-06. Revocation process. The department may revoke an individual's certification only after the individual has been:

1. Informed by the department of the allegations.
2. Informed of the department's investigation results.
3. Informed of the department's intent to revoke and provided a notice of right to request hearing.
4. Provided the opportunity to request a hearing and rebut the allegations.

History: Effective April 1, 1992.  
General Authority: NDCC 23-27-04.3  
Law Implemented: NDCC 23-27-04.3

33-36-01-07. Hearing. A request for hearing must be received by the department no later than twenty days following the individual's receipt of the allegations against the individual. If a hearing is requested, the department will apply to the office of administrative hearing for appointment of a hearing officer. The department will notify any complainants and the accused of the date set for the hearing. The hearing officer will conduct the hearing and prepare recommended findings of fact and conclusions of law as well as a recommended order for the department. The department shall notify the individual of its findings in writing after receiving the attorney general's finding of fact, conclusion of law, and recommended order.

History: Effective April 1, 1992.  
General Authority: NDCC 23-27-04.3  
Law Implemented: NDCC 23-27-04.3

MAY 1992

33-09-03-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter ~~23-17.2~~, unless otherwise indicated by the context. "Replacement equipment" means equipment which will be used instead of existing equipment which is documented to be obsolete, or not serviceable. Such equipment may be expected to possess expanded capabilities due to technical improvements but will not provide expansion into new health services.

History: Effective November 1, 1987; amended effective May 1, 1992.

General Authority: NDCC 23-01-03, 23-17.2-05

Law Implemented: NDCC ~~23-17.2-02~~ 23-17.2-05

33-09-03-03. Types of review - Procedures.

1. Full review. A full review must be conducted of each proposal found subject under North Dakota Century Code section 23-17.2-03, unless the proposal is found eligible for a special review under provisions of subsection 2 of this section.
  - a. Completed applications must be submitted to the department. Each application must be accompanied by a fee payable to the North Dakota state department of health and consolidated laboratories as prescribed by North Dakota Century Code section 23-17.2-09.
  - b. Applications received with appropriate fee will be reviewed for completeness by the department within fifteen working days of receipt. Each application must address the state health plan, each of the criteria for review and each of the policy issues stated in section 33-09-03-04, and must include documentation of assertions found in the application. Submissions of requested additional

information will be reviewed for completeness within fifteen working days of receipt. The department must deem the application complete or request necessary additional information from the applicant by the fifteenth working day. Such additional information must include documentation of assertions found in the application. No information may be required of an applicant which is not reasonably related to the state health plan, criteria for review, or policy issues specified in section 33-09-03-04 and necessary to perform review of the application.

- c. Written notice that an application has been deemed complete will be provided to the applicant and must be published in one or more newspapers of general circulation within the affected service area. The notice must include:
  - (1) The name and address of the applicant, and a description of the proposal and its estimated costs.
  - (2) The proposed schedule for review.
  - (3) The time and manner by which affected persons may request an informal local hearing to provide additional information concerning the application.
  - (4) The date of notice shall be the date of earliest publication or fourteen days following the date on which the application is deemed complete, whichever comes first.
- d. The department will have ninety days from the date of notice of completeness to conduct a review of the application based on criteria specified in section 33-09-03-04. The ninety-day-review period may be extended with concurrence of the applicant and the department. Recommendations of the department will be communicated to the applicant and to the health council.
- e. The health council may, at its option for the purpose of simultaneous consideration of like applications, delay consideration of certain applications. In such circumstances, the health council shall specify to the applicant a date certain by which the application will be considered. In no case will the health council cause consideration of any application to be delayed more than one hundred eighty days without the consent of the applicant.
- f. The health council will, except in cases described in subdivision e of subsection 1 of section 33-09-03-03, make its determination at the next scheduled meeting following completion of the department's review. The department

will cause the determination and the basis for the determination to be communicated to the applicant in writing. This communication will be made within five working days of the date of determination. Written notice of the determination must be published in one or more newspapers of general circulation within the affected service area. The notice must include:

- (1) The name and address of the applicant and a description of the proposal and its proposed costs.
- (2) The determination of the health council.
- (3) The time and manner by which affected persons may request a hearing conducted under North Dakota Century Code chapters 28-32 and 23-17.2 for reconsideration of the health council's determination.
- (4) The manner in which additional information concerning the application or the reconsideration process may be obtained.
- (5) Affected persons will have a minimum of fifteen days to respond following earliest publication of the notice.

2. **Special review.** The department may issue, but not deny, certificates of need for proposals which qualify. Special reviews will be conducted based on information obtained through the notification of intent form and any supplemental information required by the department to verify qualification under the following circumstances:

- a. Emergency or circumstances beyond the control of the applicant.
- b. Elimination or prevention of imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes, rules, or regulations.
- c. Compliance with state licensure, accreditation, or federal certification standards or building requirements for handicapped accessibility required to continue reimbursement for existing services under title XVIII or title XIX of the Social Security Act, or under North Dakota Century Code chapters 50-01 or 50-06.
- d. Cost overruns experienced in implementation of a proposal which exceed by ten percent or more the capital expenditure approved and specified in any certificate of need and which are not precipitated by a change in the scope of the project.



- e. Projects mandated by state law, with need established through the legislative process as indicated by the appropriation of funds for implementation.
- f. Acquisition and installation of replacement equipment if the equipment to be replaced meets applicable standards for minimum utilization adopted by the health council.
- g. Refinancing of existing debt which does not create additional capital except debt service reserve held in restricted capital accounts or capitalized costs of bond issuance.

History: Effective November 1, 1980; amended effective May 1, 1992.  
 General Authority: NDCC 23-01-03, 23-17.2-05  
 Law Implemented: NDCC 23-17.2-05

33-09-03-04. State health plan - Criteria for review - Policy issues. The health council will base its consideration of each application subject to full review on the department's review of the proposal and on the record of administrative proceedings held on the application. The review criteria for consideration of applications include the following: Complex applications may, at the discretion of the department, be divided into major components, each of which will be reviewed separately. Any such division will be communicated to the applicant as part of the notice of purview determination required by subsection 3 of section 33-09-03-02. Proposal modification or redefinition following the notice of purview determination, but preceding the notice that an application has been deemed complete required by subdivision c of subsection 1 of section 33-09-03-03, may require change in the division of the application by the department. Any such change in division will be communicated to the applicant as part of the notice that the application has been deemed complete. If an application is subdivided for review by the department, the applicant may provide written notice to the department of preference that the application be considered in its entirety rather than its components. Such notice must include the applicant's rationale for preferring the consideration to be as a whole and must be received by the department within fifteen working days of the mailing date of the notice deeming the application complete. Pursuant to subsection 4 of North Dakota Century Code section 23-17.2-11, the health council may consider the application as a whole, by major components, or may condition the approval of an application in any other manner the council deems appropriate.

1. The relationship of the proposal Finding. For each application or major component of an application, the health council must make a finding of consistent or inconsistent with the state health plan or any applicable document adopted by the health council as an addendum or appendix to the state health plan.

2. Criteria for review. The health council must make a finding of consistent, inconsistent, or not applicable for each of the following criteria, in relation to each application or major component of an application. An application or major component of the application must be found consistent with all criteria which are found applicable to the application in order to be approved by the health council.
  - a. The ~~need that the~~ population served or to be served has a need for the services proposed to be offered or expanded based upon the following:
    - (1) Changes in the health needs of population within the identified service area.
    - (2) Unavailability of alternative existing facilities or resources.
    - (3) Obsolescence of existing facilities or equipment.
    - (4) Absence of adequate space or facilities to conduct a needed new or existing service.
    - (5) Requirement for recruitment of qualified personnel to respond to the needs of persons residing in the service area.
    - (6) Regulatory or accreditation requirements.
    - (7) Evidence that the proposal will reduce or prevent harm to the population intended to be served by the proposal.
  - b. Any additional costs incurred to implement a proposal which result in increased charges to the public will:
    - (1) Provide improved access to needed services;
    - (2) Maintain access to needed services that would otherwise be lost; or
    - (3) Improve the value of needed services sufficiently to warrant the increased charges.
3. The corporate or institutional need for implementation of the proposal.
  - c. The applicant has actively explored alternatives to the proposal including:
    - (1) Consideration of alternative uses of resources that may be more beneficial to the population intended to be served; and

- ~~4.~~ (2) The Consideration of the availability of less costly or more effective alternative resources means for providing the services to be offered, expanded, reduced, or relocated.
- ~~5.~~ Consideration of alternative uses for resources proposed to be used in implementing the proposal.
3. Policy issues. The health council must consider the following policies or practices and where appropriate may require adoption of such policies and practices as a condition for an approved certificate of need.
- ~~6.~~ a. The contribution of the proposed service or facility in will contribute to meeting the health-related needs of persons or groups which have traditionally experienced difficulty in obtaining equal access to health services.
- ~~7.~~ The effect of implementing the proposal on competition in the affected service area including any probable favorable influence on the price or quality of services offered.
- ~~8.~~ b. The demonstration of availability of resources including plant, personnel, appropriate ancillary or support services, and funds for acquisition and operation are sufficient to reasonably ensure compliance with applicable state licensing and federal certification requirements upon implementation of the proposal.
- ~~9.~~ The probable impact of implementation on the cost of services to be offered; and on the overall cost of health care to North Dakotans.
- ~~10.~~ c. Special The application proposes special innovations in the financing of health services that may favorably influence affect the price of services proposed.
- ~~11.~~ d. Special The application proposes special innovations in the delivery of health services that may improve patient access or patient outcome.
- ~~12.~~ e. Special The proposed service or facility will address special circumstances or needs of health professional training programs or schools and health research programs located in the affected service area.

History: Effective November 1, 1987; amended effective May 1, 1992.

General Authority: NDCC 23-01-03, 23-17.2-05

Law Implemented: NDCC 23-17.2-05

TITLE 37  
Department of Transportation





MARCH 1992

STAFF COMMENT: Article 37-03.1 contains all new material but is not underscored so as to improve readability.

ARTICLE 37-03.1

ADMINISTRATIVE HEARING AND APPEAL PROCEDURES FOR  
DRIVER'S LICENSE SUSPENSION OR REVOCATION

Chapter  
37-03.1-01 Administrative Hearings - Driver's License Suspension  
or Revocation - Appeals to District Court

CHAPTER 37-03.1-01  
ADMINISTRATIVE HEARINGS - DRIVER'S LICENSE SUSPENSION OR  
REVOCATION - APPEALS TO DISTRICT COURT

Section	
37-03.1-01-01	Definitions
37-03.1-01-02	Applicability
37-03.1-01-03	Informal Disposition of Administrative Appeal
37-03.1-01-04	Director to Conduct Hearing
37-03.1-01-05	Evidence
37-03.1-01-06	Testimony
37-03.1-01-07	Consideration of Information not Presented at Formal Hearing
37-03.1-01-08	Record
37-03.1-01-09	Findings of Fact, Conclusions of Law, and Decision - Notice
37-03.1-01-10	Petition for Reconsideration

37-03.1-01-11 Who May Take Appeal  
37-03.1-01-12 Certified Record on Appeal  
37-03.1-01-13 Transmittal of Record on Appeal

37-03.1-01-01. Definitions. The definitions provided in North Dakota Century Code title 39 apply to this article, and:

1. "Hearing officer" means the person designated by the director to conduct the administrative hearing.
2. "Petitioner" means the party in interest requesting the administrative hearing under North Dakota Century Code section 39-06-33.

History: Effective March 1, 1992.  
General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-02. Applicability. The procedures in this chapter apply to administrative hearings arising under North Dakota Century Code section 39-06-33, and North Dakota Administrative Code chapters 37-03-03 and 37-03-05. Any rule in chapter 37-03-03 or 37-03-05 pertaining to the administrative hearing process prevails if in conflict with a provision of this chapter.

History: Effective March 1, 1992.  
General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-03. Informal disposition of administrative appeal. When not prohibited by statute or rule, an administrative appeal may be disposed of, in whole or in part, by stipulation, settlement, waiver of the hearing, default, or consent.

History: Effective March 1, 1992.  
General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-04. Director to conduct hearing. The director may designate a hearing officer to conduct the hearing. The director or the director's hearing officer has the authority to call and examine witnesses, to examine records and other evidence, and to administer oaths to witnesses. The director and the director's hearing officers have the authority to issue subpoenas on behalf of the department or upon the request of a party to the hearing, compelling the attendance and testimony of witnesses or the production of documents or other items described in the subpoena. The issuance of a subpoena for the production of documents will be made only upon the submission of written justification for such documents. Witness fees, mileage, and related



costs are payable at the rate payable in district court. The witness fees, mileage, and related costs are to be paid by the party requesting the witness's appearance, or the department if it requests the appearance.

History: Effective March 1, 1992.  
General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-05. Evidence. Evidence will be admitted pursuant to the North Dakota Rules of Evidence. Such rules may be waived by the department, the director, or the director's hearing officers; however, only relevant evidence is admissible. The petitioner must be informed of the waiver prior to or at the hearing. All objections must be noted in the record of the hearing. Only information and evidence offered, admitted, and made part of the official record of the hearing may be considered by the department, except as otherwise provided in this chapter or by statute.

History: Effective March 1, 1992.  
General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-06. Testimony. All testimony at the hearing must be given under oath or affirmation. At the time of administering the oath or affirmation, the hearing officer shall advise the witness of the provisions of subsection 1 of North Dakota Century Code section 12.1-11-01 and of the maximum penalty for perjury.

History: Effective March 1, 1992.  
General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-07. Consideration of information not presented at formal hearing. The department may avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by it, in addition to the evidence presented at the hearing. It may do so after providing a copy of such information or evidence to the petitioner, and, upon written request, the petitioner must be given the opportunity to present additional information or evidence and to cross-examine the person furnishing the additional information or evidence. The request to present information or evidence by the petitioner must be made in writing within ten days of the mailing of the evidence to the petitioner. Any further testimony must be taken at a hearing noticed in accordance with North Dakota Century Code section 39-06-33.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-08. Record. A record must be made of all evidence presented at the hearing. Oral testimony may be taken by a court stenographer or by an electronic recording device. All evidence presented at the hearing must be maintained by the department. A copy of the electronic recording of the hearing will be furnished to the party requesting the hearing upon written request and upon payment of the uniform charge therefor.

1. For one cassette \$10.00
2. Handling and postage 1.00
3. Exhibits, 8 1/2 x 11 .05 per page
4. Exhibits, others, at cost

If the oral testimony is taken by a court stenographer, the transcript fee will be that charged by the court stenographer.

History: Effective March 1, 1992.  
General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-09. Findings of fact, conclusions of law, and decision - Notice. Within thirty days after the evidence has been received, briefs filed, and final statements made, the hearing officer must make recommended findings of fact, conclusions of law, and decision to the director. Within fifteen days after the receipt of the recommended findings of fact, conclusions of law, and decision, the director or the director's hearing officer shall by order adopt the recommendation of the hearing officer or make separate findings of fact, conclusions of law, and decision, including therein the reason for rejecting the recommendations of the hearing officer. Upon final disposition of the matter, the department must furnish a copy of the decision to the petitioner in accordance with subsection 3 of North Dakota Century Code section 39-06-33.

History: Effective March 1, 1992.  
General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-10. Petition for reconsideration. The petitioner, within fifteen days of the mailing of an adverse decision, may request reconsideration of the matter. The petition must specifically state the grounds for relief or a statement of any further showing to be made in the matter. The petition must state if a rehearing is requested. The petition constitutes a part of the record. The department may deny such

petition or grant a rehearing upon such terms as it may prescribe. This section does not limit the department's right to reopen any proceeding under any continuing jurisdiction granted to it by law. Any rehearing granted on a petition for reconsideration must be conducted pursuant to this chapter. If the petition for reconsideration is denied, notice of the denial must be given pursuant to North Dakota Century Code section 39-06-33.

History: Effective March 1, 1992.  
General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-11. Who may take appeal. The petitioner may appeal the department's final decision as provided in North Dakota Century Code section 28-32-15, except the time for the appeal is based upon the notice given under North Dakota Century Code section 39-06-33, and section 37-03.1-01-09.

History: Effective March 1, 1992.  
General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-12. Certified record on appeal. The certified record must consist of:

1. A facsimile of the order giving rise to the hearing and a printout of the electronic data supporting the order.
2. The request for hearing.
3. Notices of all proceedings.
4. All prehearing notices and documents.
5. Any motions, briefs, petitions, or requests.
6. A statement of matters officially noticed.
7. The transcript of the hearing prepared by the person presiding at the hearing, including all testimony taken, and any written statements, exhibits, reports, memoranda, documents, or other information or evidence considered before final disposition of proceedings.
8. Any recommended findings of fact, conclusions of law, and decision or final findings of fact, conclusions of law, and decision.
9. Any information considered pursuant to section 37-03.1-01-07.

History: Effective March 1, 1992.

General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-03.1-01-13. Transmittal of record on appeal. The department will prepare and transmit the record on appeal to the district court as provided for in North Dakota Century Code section 28-32-17, without cost to the party filing the appeal.

History: Effective March 1, 1992.  
General Authority: NDCC 39-06-33  
Law Implemented: NDCC 39-06-33

37-08-01-05. Minimum vision requirements and restrictions. Applicants and operators requesting or maintaining a North Dakota license or permit and who meet the following minimum vision standards, as established by the drivers license and traffic safety division, shall comply with the associated requirements and restrictions (which are nonexclusive):

Minimum visual acuity	Requirements and restrictions with or without corrective or special device.
1. 20/30 one-eyed individual	(a, h, j).
2. 20/40 each eye	(a).
3. 20/50 each eye	(b, c, d).
4. 20/50 better eye 20/60 or less other eye	(b, c, d, f).
5. 20/60 better eye 20/60 or less other eye	(b, c, d, f, g).
6. 20/60 better eye 20/70 or less other eye	(b, c, d, e, g).
7. <u>Less than 20/60 better eye in each eye, but better than 20/70 in each eye</u>	(b, c, d, e, g, h, i).
8. 20/70 better eye 20/80 - 20/100 other eye	(b, c, d, e, g, h, i, k, l).
9. 20/80 better eye 20/80 - 20/100 other eye	(b, c, d, e, g, h, i, k, l).
10. Requirements and restriction code:	

- a. Minimum vision without corrective lenses.
- b. Corrective or special visual device (when required).
- c. Daylight driving only.
- d. Vision specialist recommendations.
- e. Vision recheck within one year.
- f. Vision recheck within two years.
- g. Road test.
- h. Field of view report:
  - (1) If the binocular horizontal visual field 140 degrees or better - no operator's license restrictions.
  - (2) If the binocular horizontal visual field less than 140 degrees - operator's license restrictions.
  - (3) If the binocular horizontal visual field less than 120 degrees - no operator's license.
  - (4) If one-eyed applicant:
    - (a) A minimum horizontal visual field of 120 degrees:  
Nasal - 50 degrees,  
Temporal - 70 degrees.
    - (b) A minimum vertical field of:  
Inferior - 50 degrees,  
Superior - 25 degrees.
    - (c) If the applicant's superior or inferior visual field is impaired, the applicant's better eye must meet the one-eyed vertical field criteria.
- i. Report any eye disease or injury.
- j. Outside mirror.
- k. Class III noncommercial vehicles only.
- l. Glare resistance and glare recovery (for daylight only).

History: Effective December 1, 1988; amended effective March 1, 1992.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 39-06-03(7)

STAFF COMMENT: Article 37-09 contains all new material but is not underscored so as to improve readability.

## ARTICLE 37-09

### DISCLOSURE OF BODY DAMAGE TO MOTOR VEHICLE

Chapter  
37-09-01 Application and Requirements of Disclosure

#### CHAPTER 37-09-01 APPLICATION AND REQUIREMENTS OF DISCLOSURE

Section	
37-09-01-01	Definitions
37-09-01-02	Damage Disclosure Statement - Contents
37-09-01-03	Damage Disclosure Statement - When Required
37-09-01-04	Damage Verification Statement
37-09-01-05	Salvage and Junk Motor Vehicles
37-09-01-06	Damage Information Placed on Title
37-09-01-07	Effective Date of Chapter

37-09-01-01. Definitions. The definitions provided in North Dakota Century Code title 39 apply to this article, except:

1. "Damage" is the change in the body or structure of a motor vehicle, generally resulting from a vehicular crash or accident, including loss by fire, vandalism, weather, or submersion in water, resulting in damage of three thousand dollars or greater in one occurrence. The term does not include body or structural modifications, normal wear and tear, glass damages, hail damage, or items of normal maintenance and repair.
2. "Motor vehicle" is exclusive of motorcycles, all-terrain vehicles, snowmobiles, and house cars.

History: Effective April 1, 1992.  
General Authority: NDCC 24-02-01.2, 39-02-03  
Law Implemented: NDCC 39-05-17.2

37-09-01-02. Damage disclosure statement - Contents. The damage disclosure statement must contain the name and address of the transferor, a statement as to whether the motor vehicle has sustained damage, and the name and address of the transferee. The damage

disclosure statement must be completed, signed, and certified by the transferor.

History: Effective April 1, 1992.  
General Authority: NDCC 24-02-01.2, 39-02-03  
Law Implemented: NDCC 39-05-17.2

37-09-01-03. Damage disclosure statement - When required. A damage disclosure statement must be completed prior to the transfer of the title on all current year models of motor vehicles and those models manufactured in the four years previous to the current model year.

History: Effective April 1, 1992.  
General Authority: NDCC 24-02-01.2, 39-02-03  
Law Implemented: NDCC 39-05-17.2

37-09-01-04. Damage verification statement. If the damage disclosure statement reveals a damage, the transferor must complete a damage verification statement. The damage verification statement must provide for:

1. The title number, serial number or vehicle identification number, make, model, and year of the motor vehicle.
2. A brief description of the cause of the damage and an explanation of the nature of the damage sustained.

History: Effective April 1, 1992.  
General Authority: NDCC 24-02-01.2, 39-02-03  
Law Implemented: NDCC 39-05-17.2

37-09-01-05. Salvage and junk motor vehicles. Prior to the transfer of title, a damage verification statement is required for all motor vehicles titled pursuant to North Dakota Century Code section 39-05-20.2.

History: Effective April 1, 1992.  
General Authority: NDCC 24-02-01.2, 39-02-03  
Law Implemented: NDCC 39-05-17.2

37-09-01-06. Damage information placed on title. When a damage verification statement has been filed, the North Dakota department of transportation must record on the title to the damaged motor vehicle a statement to the effect that the department records indicate that the motor vehicle has sustained damage. This information must be placed on all subsequent titles issued on the damaged motor vehicle.



Additionally, a statement on vehicle damage may be entered on the registration card for such vehicle.

History: Effective April 1, 1992.

General Authority: NDCC 24-02-01.2, 39-02-03

Law Implemented: NDCC 39-05-17.2

37-09-01-07. Effective date of chapter. This chapter is effective April 1, 1992, and is prospective in application.

History: Effective April 1, 1992.

General Authority: NDCC 24-02-01.2, 39-02-03

Law Implemented: NDCC 39-05-17.2

TITLE 38  
Highway Patrol



APRIL 1992

38-07-02-05. Agreements and contracts.

1. All contracts between schools and students must be on a form approved by the superintendent.
2. A contract may not exceed a maximum of ten hours, or for truck tractor, a maximum of three hundred twenty hours, of behind-the-wheel training without execution of a new contract. The contract must include:
  - a. The name, date of birth, and address of the student.
  - b. The kind of training provided.
  - c. Approved vehicles to be used for instruction.
  - d. The number of hours of instruction and the rate per hour.
  - e. The signature of the student or other authorized person, or both.
  - f. The date of the contract.
3. A person may not be given lessons or any other service relating to instruction of motor vehicle operation unless and until a written contract has been executed between the school and the student.
4. Each school shall file and maintain with the superintendent a list of those persons authorized on behalf of the school to execute contracts or renewal agreements and certificates of enrollment and completion. A complete signature record form must be filed with the superintendent for each person authorized to sign the above-listed documents for the school.

5. No school may represent or agree orally or in writing to give instruction until a driver license is obtained, to give free lessons, or to offer premiums or provide discounts if a driver license is not obtained.
6. No owner, operator, instructor, or other employee of a commercial driver training school may:
  - a. Attempt to influence any decision of an examining officer with respect to the licensing of any student of the school or any other person.
  - b. Imply to the student or other person for any purpose their ability to influence in any manner the driver license examiners.

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

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-03

38-07-03-01. Vehicle safety standards. Each vehicle used for driver training instruction must comply with all federal and state motor vehicle safety standards for the model year of the vehicle and must have the following equipment:

1. Dual control brakes. Not applicable in trucks for truck driving schools.
2. Dual control clutch pedal, when applicable.
3. External rearview mirrors on left and right sides of the vehicle.
4. Padded dashboard and sun visors. Not applicable in trucks for truck driving schools.
5. Seatbelts for each occupant of the vehicle.
6. Shoulder harnesses for front seat occupants if originally equipped for such vehicles.

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

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-03

38-07-03-05. Vehicle inspection. All vehicles used for driver training purposes must pass a vehicle inspection immediately after installation of dual control devices and periodically thereafter as may be designated by the superintendent. The vehicle inspection must be done by a person authorized by the superintendent. The license of a commercial driver training school or instructor may be suspended at any

time if a vehicle used for driver training purposes is not maintained in a safe operating condition.

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

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-02

38-07-04-01. Instructor requirements. An applicant for a commercial driver training instructor license shall:

1. Be a resident of the state of North Dakota, unless waived by the superintendent for good cause.
2. Be at least twenty-one years of age.
3. Read, write, and speak the English language.
4. Have normal peripheral vision, depth perception, and color vision. Visual acuity of at least 20/40 in each eye, with or without corrective lenses.
5. Have been a licensed driver for three years, holding a valid North Dakota driver license unless waived by the superintendent for good cause, free from requirement to show proof of financial responsibility, and have a satisfactory driving record free from any conviction that would constitute the basis for suspension or revocation of the instructor license.
6. Submit with the application a certified copy of the applicant's driving record dated not earlier than thirty days prior to the receipt of application by the superintendent.
7. Not have been convicted of a crime involving moral turpitude.
8. Furnish the superintendent with ~~two sets~~ one set of fingerprints and photographs and authorize investigation to determine if the applicant has a criminal record.
9. Pass a written and driver training road test for each class of license for which driver training is to be offered. The test must have been developed and administered by the ~~highway~~ department of transportation drivers license division. The superintendent may periodically require a licensed instructor to submit to a written examination consisting of all or any part of the test specified in this section. The test must include:
  - a. The operation of a motor vehicle.
  - b. Traffic laws.

- c. Road signs, laws and regulations, and other material pertaining to and affecting the driver, traffic, and motor vehicle.
10. Be in good physical and mental health, and having no illness or condition that would render the applicant unable to safely perform the duties as an instructor. The applicant shall submit to a physical examination by a licensed physician and a certificate must accompany the application.
  11. Instructor preparation:
    - a. Hold a valid North Dakota driver education certificate issued by the department of public instruction; or
    - b. Have successfully completed an approved preparation course or courses for commercial driver education instructors.

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

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-04

38-07-04-03. Driver license requirement. Instructors must at all times, while giving behind-the-wheel or "on-street on-cycle" instruction, carry a valid ~~North Dakota~~ driver license applicable to the type of vehicle for which instruction is being conducted.

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

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-04

38-07-05-04. Behind-the-wheel and on-cycle instruction.

1. Instruction may be provided on machines which simulate driving conditions only when the use of such machines has been specifically approved as a part of the curriculum of behind-the-wheel training by the superintendent.
2. Instructors shall ensure that seatbelts are in use at all times while instruction is being given behind the wheel of a motor vehicle.
3. Instructors shall ascertain that the student is in possession of a valid ~~North Dakota~~ driver instruction permit or driver license prior to giving behind-the-wheel instruction.
4. Instruction for class ~~±~~ A and class ~~±±~~ B, C type vehicles may be given only when specifically approved by the superintendent.



5. Instructors must at all times, while giving behind-the-wheel or "on-street on-cycle" instruction, ensure that students do not violate any traffic law, rule, regulation, sign, or street marking governing the operation of a motor vehicle.
6. When the student has satisfactorily completed at least six hours of behind-the-wheel instruction, the authorized school operator or instructor shall furnish the student a certificate of completion to that effect.
7. Instruction may not be given on routes used for the North Dakota state driver license road test.

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

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-03, 39-25-04

38-07-06-01. Refusal, suspension, or revocation of license. The superintendent may refuse to issue or may suspend or revoke a license in any case where the superintendent finds the applicant or licensee has violated any one of the provisions of chapter 39-25 or the regulations herein prescribed. A suspended or revoked license must be returned to the superintendent by the licensee. The license of a commercial driver training school or instructor may be revoked, suspended, issuance refused, or a renewal refused under any of the following conditions:

1. Whenever the person commits fraud or engages in fraudulent practice with reference to the person's license application.
2. Whenever the commercial driver training school or instructor induces or countenances fraud or fraudulent practice on the part of any applicant for a driver license or instruction permit.
3. When a commercial driver training school or an instructor advertises or implies that a driver license is guaranteed upon completion of the course of instruction.
4. When instruction is given to a person who does not have a valid ~~North Dakota~~ learner or instruction permit or driver license in their possession.
5. When a certificate of enrollment or completion is signed by an authorized school operator or instructor and information on the certificate is false.
6. When the person is convicted of a violation of a criminal law or traffic law, or both, including, but not limited to, driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs, leaving the scene of an accident, careless driving, or reckless driving.

7. When there is evidence that intoxicating beverages were present or consumed on the school premises or in its training vehicles.
8. When a student is overcharged or encouraged to continue indefinite instructions beyond the point where the student is capable of passing the driver license examination, or both.
9. Any licensed school operator or instructor whose license is subject to suspension or revocation may be required to appear before the superintendent or the superintendent's designated agent to show cause why such license should not be suspended or revoked. Any person who has been refused issuance or renewal of a license or whose license is subject to suspension or revocation is entitled to a hearing before the superintendent as provided in North Dakota Century Code chapter 28-32.

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

General Authority: NDCC 39-25-02

Law Implemented: NDCC 39-25-06

TITLE 43  
Industrial Commission





MARCH 1992

43-03-01-01. History - Administration. Pursuant to the authority provided in chapter 735 of the 1989 Sessions Laws, Since 1987 the North Dakota industrial commission (hereinafter referred to in this article as "commission") is making has been authorized to make funds available to provide financial assistance for contracts for land reclamation research projects and for research, development, and marketing of lignite and products derived from lignite, as further described in this article. The lignite research council, established by executive order 1987-4, and as presently constituted by executive order 1991-1, will review and make recommendations to the commission on all applications for financial assistance under this program. The industrial commission concurred in the appointments to the lignite research council. Any and all awards of funds will be at the sole discretion of the commission, after receiving the recommendation of the lignite research council. In all instances, commission decisions will be made solely on the basis of the acceptable applications submitted to the commission. The commission reserves the right to deny funds to any applicant not submitting a complete application or to any applicant whose application, in the opinion of the commission, does not meet applicable criteria or provide sufficient justification for a request of funds.

History: Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

General Authority: S.L. 1987, ch. 729, § 4 NDCC 57-61-01.5

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7 NDCC 54-17.5-01, 57-61-01.5

43-03-01-02. North Dakota projects encouraged. The commission encourages applications for projects conducted entirely or largely within the boundaries of the state of North Dakota. Definitions. As used in this article:



1. "Applicant" means any person or entity applying to the commission for a grant from the lignite research fund.
2. "Application" means the written document that is submitted to the commission by an applicant seeking a grant from the fund.
3. "Commission" means the North Dakota industrial commission or its representative.
4. "Contract" means the signed agreement between the commission and grantee which describes the rights and duties of the commission and grantee with regard to the program.
5. "Council" means the lignite research council.
6. "Executive committee" means a committee of the council.
7. "Fund" means the lignite research fund available to the commission to provide funding for the program.
8. "Grant" means the monetary award made by the commission under the program.
9. "Grantee" means a successful applicant for a grant from the fund.
10. "Program" means the program administered by the commission to provide financial assistance from the fund for land reclamation research projects and for research, development, and marketing of lignite and products derived from lignite.
11. "Technical review committee" means a committee or committees selected by the commission to review the merits of applications and to otherwise assist the commission in administering the program.

History: Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

General Authority: S.L. 1987, ch. 729, § 4 NDCC 57-61-01.5

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7 NDCC 54-17.5-04, 57-61-01.5

43-03-01-04. Acceptance and rejection of proposals applications. The rules in this article do not commit the commission to award funds. The commission reserves the right to accept or reject any or all proposals applications received as a result of the program, and to negotiate with any and all qualified applicants, ~~to cancel or amend any part of this program, or to waive any requirement contained in this article, except the provisions of section 43-03-04-02 and chapter 43-03-06, if it is in the commission's best interests to do so.~~

History: Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 57-61-01.5

Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-04, 57-61-01.5

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

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

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 57-61-01.5

Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-04, 57-61-01.5

43-03-01-06. Statement of intent. ~~The commission's sole interest in issuing the rules in this article is to further the development and use of North Dakota's lignite resources through the financial support of projects proposed and executed by qualified sponsors. The intent of this program is financial assistance for projects proposing research, development, or marketing of lignite or products derived from lignite and land reclamation research projects without regard to particular applicants. Projects which may be proposed are deemed to be activities of the respective applicants and not the commission.~~ Repealed effective March 1, 1992.

History: ~~Effective February 1, 1988; amended effective October 1, 1990.~~

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

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

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

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

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 57-61-01.5

Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-04, 57-61-01.5

43-03-02-02. Eligible and ineligible projects. ~~In general, any~~ Any project proposing research, development, or marketing of lignite or



products derived from lignite, or a land reclamation research project ~~may be~~ is eligible for a contract under this program. The following are examples of eligible topics:

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

- c. Soil respreading ~~and~~, depth of soil replacement ~~research~~, and compaction studies.
  - d. Research relating to root zone hydrology, runoff, and erosion on reclaimed land.
  - e. Other projects that may reduce unnecessary regulatory costs and assist in effectively reclaiming mined land to its original or better productivity.
3. The following activities or uses are ineligible for funding under this program:
- a. Business startup capital.
  - b. Business working capital.
  - c. Business advertising or promotional expenses pertaining to a specific company or cooperative.

History: Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 57-61-01.5

Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-01, 57-61-01.5

43-03-03-01. Maximum grant amount. ~~The maximum amount of commission funds per grant will be fifty thousand dollars. Applicants must justify amounts requested~~ Grants may be of any amount within the limits of legislative appropriation.

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

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 57-61-01.5

Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-04, 57-61-01.5

43-03-03-02. Matching funds —Equity requirements. Funds received from any contract with the commission A grant may not exceed fifty percent of the total project cost. Documentation demonstrating the matching funds, including letters of commitment from other funding sources, must be submitted to the commission within sixty days of the approval of ~~a project~~ an application by the commission, or within any additional time granted by the commission. The commission's approval is contingent upon receiving this documentation. If it is not received, the approval lapses and no grant may be made. Indirect costs (contributed equipment, materials, or services) may be used by any applicant to supply the required funding match or contribution.

History: Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 57-61-01.5

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

1. Title page. The title page must include the project title, principal investigator, principal submitting organization, date of submission, and amount of request.
2. Transmittal page. A transmittal letter, or organizational form, signed by an individual of the submitting organization legally committing the organization to the project.
3. Summary. A one-page abstract of the project indicating:
  - a. The objective,
  - b. The expected results,
  - c. The time period,
  - d. The total project costs, and
  - e. The major participants in the project.
4. Table of contents, list of figures, and list of tables (as required).
5. Objectives. A clear, concise statement of the objectives of the proposed project. The objectives should indicate how the proposed work will enhance the utilization of North Dakota lignite.
6. Background. A short summary of prior work related to the proposed work conducted by the participating organizations and by other organizations. The background section should clearly indicate the need for the proposed project.
7. Goals. A statement of intended results of the proposed project. The goals should provide the standards by which the project outcome is measured.
8. Methods. A description of the work to be performed under contract to the North Dakota industrial commission.
9. Timetable. An outline of the major project activities and their timetable for completion with identification of specific project deliverables.



- +10. Personnel. Brief narrative summaries of the experience and qualifications of the principal investigator and other major participants in the project.
- +11. Qualifications of applicant. Brief descriptions of the qualifications of the applicant pertinent to the proposed work.
- +12. Budget. The budget should contain an itemized breakdown of salary, direct operating costs, and indirect costs, to be supported by the North Dakota lignite research funds. Identification of the indirect costs or matching funds should also be indicated.
- +13. Appendices. Supporting documentation (as required).

An application must be direct, concise, and informative. It must be accompanied with the application fee set forth in section 43-03-04-03. It must be typed and double spaced on eight and one-half-inch by eleven-inch [21.59-centimeter by 27.94-centimeter] paper. Thirty-five copies of the application are to be submitted to the following address.

State of North Dakota  
The Industrial Commission  
State Capitol  
Bismarck, North Dakota 58505  
ATTN: Lignite Research Program

The application must contain the following:

1. Transmittal letter. A transmittal letter setting forth a binding commitment on behalf of the applicant to complete the project as described in the application if the commission makes the grant requested. The letter must be signed by someone authorized to contract on behalf of the applicant.
2. Title page. A title page setting forth the project title, applicant, principal investigator, date of application, and amount of the request.
3. Table of contents.
4. Abstract. A one-page abstract of the project stating its objective, expected results, duration, total project cost, and participants.
5. Project summary. An overview of the project that includes an explanation of its objectives. The overview must include enough information to allow members of the technical review committee to determine if they are qualified to review the application.

6. Project description. A detailed description of the project, including its objectives; its methodology; its anticipated results; the facilities, resources, and techniques to be used and their availability and capability; the environmental and economic impacts of the project while it is underway; its ultimate technological and economic impacts; and why the project is needed.
7. Standards of success. The standards by which the success of the project is to be measured.
8. Background. A summary of prior work related to the project conducted by the applicant and other participants as well as by other organizations.
9. Qualifications. A summary of the experience and qualifications pertinent to the project of the applicant, principal investigator, and other participants in the project.
10. Value to North Dakota. An explanation of what parts of the public and private sector will likely make use of the project's results, and when and in what way; of the potential that commercial use will be made of the project's results; how the project will enhance the use of North Dakota lignite and lignite products; how it will preserve existing jobs and create new ones; and how it will otherwise satisfy the priorities established in North Dakota Century section 54-17.5-03.
11. Management. A description of how the applicant will manage and oversee the project to ensure it is being carried out on schedule and in a manner that best ensures its objectives will be met, and a description of the evaluation points to be used during the course of the project.
12. Timetable. A project schedule setting forth the starting and completion dates, dates for completing major project activities, and proposed dates upon which the interim reports required by section 43-03-05-08 will be submitted.
13. Budget. An itemized list of the project's capital costs; direct operating costs, including salaries; and indirect costs; and an explanation of which of these costs will be supported by the grant and in what amount. An explanation why the funding requested is necessary to achieve the project's objectives and, if less funding is available than that requested, whether the project's objectives will be unattainable or delayed.
14. Matching funds. An identification of all other committed and prospective funding sources and the amount of funding from each source.



15. Tax liability. An affidavit stating that the applicant does not have an outstanding tax liability owed to the state of North Dakota or any of its political subdivisions.

16. Confidential information. Any information in the application that is entitled to confidentiality and which the applicant wants to be kept confidential should, if possible, be placed in an appendix to allow for administrative ease in protecting the information from public disclosure while allowing public access to the rest of the application. Such information must be clearly labeled as confidential and the applicant must explain why the information is entitled to confidentiality.

17. Appendices. Any necessary supporting documentation.

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

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 57-61-01.5

Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-03, 54-17.5-04, 57-61-01.5

43-03-04-02. Application deadline. Applications for the first review and award process in each fiscal year must be postmarked on or before October first, and applications for the second review and award process in each fiscal year must be postmarked on or before April first. In addition to these two grant rounds, the commission may establish additional grant rounds and set application deadlines for those rounds. The applicant may amend its application at any time before the application deadline. After the application deadline, the applicant may amend its application only upon the approval of the commission.

History: Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 57-61-01.5

Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-04, 57-61-01.5

43-03-04-04. Outstanding tax liability. All applicants must complete and submit with the application an affidavit attesting to the fact that the applicant has no outstanding tax liability owed to the state of North Dakota. Superseded by subsection 15 of section 43-03-04-01, effective March 1, 1992.

History: Effective February 1, 1988.

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

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

43-03-05-01. Application evaluation - Constraints and criteria Criteria. All applications will be evaluated according to the constraints imposed by chapter 735 of the 1989 Session Laws criteria set

forth in North Dakota Century Code chapter 54-17.5, and the criteria established by the commission as stated in this section.

1. North Dakota lignite related. The commission desires that funded projects General criteria. Priority areas of the program include, but are not limited to, marketing applications of lignite and lignite products; reclamation applications that will reduce unnecessary regulatory costs; demonstration or development activities for lignite projects and activities and for lignite products that have a high probability of commercialization; and base-line research that promotes additional lignite production or lignite products for the economic growth of North Dakota. The project must be applicable to research, development, or marketing of lignite or products derived from lignite or land reclamation research. The projects need not be unique to North Dakota's lignite resources but must be applicable to them. The commission therefore requires the following: It is preferred that the project focus on the development and use of lignite rather than basic research.

a. Development. All proposals must state how the project will assist in the development of North Dakota's lignite resources.

b. Consistency with state policy. All proposals must state how the proposed project is consistent with sections 4 and 7 of chapter 735 of the 1989 Session Laws.

2. Financial related.

a. Matching funds. All proposals must contain information identifying all other funding sources, including the sponsor and federal, state, or other private sources.

b. Project costs compared to benefits. All proposals must show the costs of the proposed project as compared with the benefits. All proposals must show ancillary or indirect benefits from the project, such as new business creation, increased employment opportunities, and other ancillary or indirect benefits from the research effort.

c. Funding level necessary for effect. All proposals must show that the level of funding is necessary in order to achieve the project objectives, how long will project funding need to continue, and whether there are logical evaluation points along the project timetable. All proposals must show, if less funding is available than requested, whether the results will be delayed or unattainable.

3. Proposal related.



- a. Project objectives. The commission requires that the project objectives and the budget and work plan be concisely stated and have a reasonable probability of success.
- b. Research methodology. The commission requires that the proposal describe the facilities and techniques to be employed, their availability and capability, and disposition of any facilities or equipment acquired during the course of the project once the project is concluded.
- c. Personnel qualifications. The commission requires that all proposals contain a statement of the qualifications and experience of the project director and key staff and estimate of the time to be committed by each.

2. Specific criteria.

a. Projects should conform to the following criteria:

- (1) Preserve or enhance existing jobs and create the opportunity for additional jobs.
- (2) Preserve or enhance existing lignite production.
- (3) Provide the opportunity for development and demonstration of marketable lignite products and technologies.
- (4) Provide for economic growth and benefit in coal-producing counties or those counties with recoverable coal reserves.
- (5) Provide a high probability for commercialization of the process, activity, or technology in North Dakota by the year 2000 or before.
- (6) Provide for specific marketing strategies and contributions to the effective marketing of lignite, its products, or lignite-based technologies by the year 2000 or before.
- (7) Provide opportunity for reclamation research projects that will reduce unnecessary regulatory costs and assist in effectively reclaiming surface mine land to its original or better productivity as soon as possible.

b. The merits of the project will be weighed in relation to:

- (1) The potential value of the project's success including market potential, social value, environmental value, technical feasibility,

competition in the marketplace, and timing of completion;

(2) The feasibility of the cost benefit ratio of the project;

(3) The risk involved in funding the project; and

(4) The economic condition of the applicant.

c. The project's compatibility with the objectives of the program will be considered, in particular, the following will be evaluated:

(1) The need for the project;

(2) The potential use by the lignite-related industry of the results to be achieved by the project;

(3) The timeliness of the project with regards to deadlines established by legislation;

(4) The impact on the lignite-related industry;

(5) The level of funding requested;

(6) The level of matching funds;

(7) The short-term and long-term benefits to the applicant, lignite industry, lignite producers, and the counties and state of North Dakota;

(8) The likelihood that the project will achieve its technical and market goals;

(9) The scientific soundness and innovation of any proposed technology;

(10) The financial feasibility of the proposed project; and

(11) The technical qualifications and expertise of the applicant, the investigators, and the sponsors.

History: Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

General Authority: S.L. 1987, ch. 729, § 4 NDCC 57-61-01.5

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7 NDCC 54-17.5-01, 54-17.5-03, 57-61-01.5

43-03-05-02. ~~Application review process~~ Recommendation by lignite research council. Applications will be reviewed by commission

staff and any outside reviewers deemed necessary. All applications will also be submitted to the lignite research council for review and recommendation. Before making a decision on any application, the commission will receive and consider the recommendations of the lignite research council regarding the application and proposed project. - Initial review. Upon receipt of an application, the commission will determine if the application meets eligibility requirements and is complete. The commission shall complete this review within thirty days of the application deadline date, though the commission may extend this time if needed to properly review an application. If the commission determines that the application meets eligibility requirements and is complete, the application will be referred to a technical review committee. The commission may also refer any question it has about completeness and eligibility to the technical review committee and such question may then be a consideration throughout the review process.

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

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 47-61-01.5

Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-03, 54-17.5-04, 57-61-01.5

43-03-05-02.1. Application review - Technical review committee.

1. Composition. Members of a technical review committee are selected by the commission. Committee members should possess the expertise and experience necessary to adequately review the application.
2. Conflict of interest. No individual with a direct financial interest in a proposed project may be involved in any way in reviewing the application. If asked to review the application, the individual with the conflict of interest shall immediately inform the commission of the conflict. Failure to so notify the commission disqualifies the individual from serving on any technical review committee unless reinstated by the commission, and the commission may disqualify the application from being approved during the round of grants within which the conflict occurred.
3. Review. The technical review committee shall assess the technical and fiscal merits of the application. Upon completion of its review, the committee shall make its recommendation to the council. The committee shall submit its recommendation within sixty days, though the commission may extend this time if the committee needs more time to properly review the application.
4. Notification to applicant. The commission shall promptly notify the applicant of the recommendation made by the committee to the council.

History: Effective March 1, 1992.



General Authority: NDCC 57-61-01.5  
Law Implemented: NDCC 54-17.5-03, 54-17.5-04, 57-61-01.5

43-03-05-02.2. Application review - Council recommendation and commission decision. The council shall consider, but is not bound by, a recommendation of the technical review committee. The council shall make a recommendation on each application to the commission. The council shall make its recommendation to the commission within thirty days of its receipt of the technical review committee's recommendation, though the commission may extend this time if the council needs more time to properly review the application. The commission shall consider, but is not bound by, a recommendation of the council. Though the commission makes the decision to approve or reject all applications, the commission may only approve those applications that have received a favorable council recommendation.

History: Effective March 1, 1992.  
General Authority: NDCC 57-61-01.5  
Law Implemented: NDCC 54-17.5-02, 54-17.5-03, 54-17.5-04, 57-61-01.5

43-03-05-03. Contracts. All successful applicants will be required to A grantee must enter into a contract with the commission and submit any supporting documentation required by the attorney general commission. The application will form an integral part of the contract. The commission shall provide a proposed contracts contract to successful applicants grantees within sixty days of commission approval of the project. The successful applicant grantee will then have sixty days to execute a contract. If a contract is not executed by the successful applicant grantee within one hundred twenty the sixty days of commission approval of the project, the award will be canceled unless an extension of time is granted by the commission or its authorized agent. Work carried out under a contract is the work of the grantee and not the commission.

History: Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.  
General Authority: S.L. 1987, ch. 729, § 4 NDCC 57-61-01.5  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7 NDCC 54-17.5-04, 57-61-01.5

43-03-05-04. Disbursement of funds. Funds will be disbursed only after a contract has been executed. All disbursements will be made according to a the schedule mutually agreed on by the commission and the applicant in the contract. Disbursements may be withheld if the commission deems the grantee has not complied with these rules or the contract.

History: Effective February 1, 1988; amended effective March 1, 1992.  
General Authority: S.L. 1987, ch. 729, § NDCC 57-61-01.5



Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-04, 57-61-01.5

43-03-05-04.1. Project duration. The project must be completed within the time specified in the contract. If the project cannot be completed within the time specified in the contract, the grantee may make a written request to the commission for an extension of up to one year. The request must set forth the specific additional time requested and the reasons why an extension is needed. Upon receipt of the request, the commission shall convey it to the council's executive committee. The executive committee may make use of a technical review committee to analyze the request. The executive committee shall review the request and make a recommendation to the commission. The commission, after reviewing the recommendation, shall decide whether or not to grant the request. Additional extensions may be sought under the same procedure described above, but may only be granted if the grantee proves that factors beyond the grantee's control are the cause of its inability to complete the project on time and that since receiving the first extension the grantee has been diligent in all respects in trying to complete the project on time.

History: Effective March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-04, 57-61-01.5

~~43-03-05-05. Project duration and additional allocations. Projects may be conducted for multiyear periods. As a practical limit, however, project duration should be planned for two years or less. Once made, allocations are effective until the project is completed, canceled, or funds exhausted or rescinded by the commission. After the initial allocation of funds, any subsequent additional allocations by the commission cannot be guaranteed or assured and would depend on future appropriation of funds as well as the nature of the request and progress shown on prior work. If the work under a contract extends beyond the state's fiscal biennium in which the contract is made, any further disbursements of the grant by the commission to the grantee cannot be guaranteed and will be made only if sufficient funds are appropriated in the new biennium to satisfy the contract.~~

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

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 57-61-01.5

Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-04, 57-61-01.5

~~43-03-05-06. Partially funded or delayed projects. If the commission award to a project grant is less than the amount requested, the applicant may elect to decline the award or proceed with the project as proposed, notwithstanding the reduced award. Failure of an applicant a grantee to proceed with the project in a timely manner or comply with contract terms may result in cancellation of the award by the commission~~



or these rules entitles the commission to cancel the grant and contract and to receive from the grantee full reimbursement of all funds the commission disbursed under the contract.

History: Effective October 1, 1990; amended effective March 1, 1992.

General Authority: NDCC S.L. 1987, ch 729, § 4 NDCC 57-61-01.5

Law Implemented: NDCC S.L. 1987, ch 729 §§ 4, 7 NDCC 54-17.5-04, 57-61-01.5

43-03-05-07. Contract modifications. If at any time after entering a contract the grantee desires to change any term of the contract, the grantee shall make a written request to the commission. The request must set forth the specific change desired and the reasons why the change is needed. Upon receipt of the request, the commission shall convey it to the council's executive committee. If the executive committee decides that the requested change is substantive, it shall refer the request to the council and the council shall review it and make a recommendation to the commission. The executive committee and council may use a technical review committee to analyze the request. If the executive committee decides that the requested change is not substantive, the executive committee shall review the request and make a recommendation to the commission. The commission, after receiving the recommendation of the council or of the executive committee, shall decide whether or not to grant the request.

History: Effective March 1, 1992.

General Authority: NDCC 57-61-01.5

Law Implemented: NDCC 54-17.5-04, 57-61-01.5

43-03-05-08. Reporting requirements. A grantee has the following reporting obligations:

1. Interim reports. A grantee shall submit to the commission reports summarizing the project's accomplishments and expenditures to date. The timing of the reports will be specified in the contract.
2. Special reports. If substantial progress on a project occurs earlier than anticipated, the grantee shall immediately submit to the commission a report explaining the accomplishment.
3. Final report. A comprehensive final report must be submitted to the commission by all grantees within the time specified in the contract. This report must include a single page project summary describing the purpose of the project, the work accomplished, the project's results, and the potential applications of the project. The rest of the report must explain these subjects in detail as well as the total costs of the project, a summary fiscal accounting of the entire project, any plans for developing or putting to commercial use the results of the project, and whether and in what manner the



project met or failed to meet the standards referred to in subsection 7 of section 43-03-04-01.

History: Effective March 1, 1992.  
General Authority: NDCC 57-61-01.5  
Law Implemented: NDCC 54-17.5-04, 57-61-01.5

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

History: Effective February 1, 1988; amended effective March 1, 1992.  
General Authority: S.L. 1987, ch. 729, § 4 NDCC 57-61-01.5  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7 NDCC 54-17.5-04, 54-17.5-06, 57-61-01.5

43-03-06-02. Rights to technical data. Rights to technical data, including software developed under the terms of a grant resulting from proposals submitted, shall remain with the grantee.

History: Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.  
General Authority: S.L. 1987, ch. 729, § 4 NDCC 57-61-01.5  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7 NDCC 54-17.5-04, 57-61-01.5

43-03-06-03. Use for governmental purposes. The grantee normally may copyright and publish material developed with commission support funding. The state of North Dakota and its consultants, independent contractors, and suppliers, to the extent such are providing services to the state, shall have an irrevocable royalty-free right to practice under any patents, patent applications, or other new technology developed under the commission's programs. The intent of the policy stated in this section is simply to enable state agencies to purchase or use, or both, new technology products or processes for governmental purposes without having to pay the imputed development costs of the products or processes twice; first in the research and development state under commission funding and then later in the purchase of the processes or products. The state may not use this provision to enter into the private marketplace through direct manufacture or production of goods and services. The commission may waive the state's royalty-free right if any other governmental entity, state, federal, or foreign, provides matching funds and imposes conditions that do or may conflict with the right provided for by this section. A waiver may be given only if the following are met:

1. The grantee has requested from the other funding source a waiver of its requirements that conflict or may conflict with this section;
2. The other funding source provides at least twenty percent of the project's funding; and
3. It is unlikely the state would ever seek to use the right given the state under this section.

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

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 57-61-01.5

Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-04, 57-61-01.5

43-03-06-04. Patent rights - Manufacturing in North Dakota. Applicants normally may retain the principal worldwide patent rights to any invention made with financial support under this program, except the patent holder agrees directly, or through licensing of patents, to assure that any manufacturing thereof shall substantially occur in North Dakota. Similarly, use of any new technology or other technical information funded derived in part from funding under this program requires that any manufacturing thereof shall substantially occur in North Dakota. For the purposes of this section, the words "substantial" or "substantially" shall mean not that the primary manufacturing must occur in North Dakota, but rather that more than incidental manufacturing must occur in North Dakota. The applicant must agree to grantee or licensee or assignee, as determined by the commission, must reimburse the entire grant amount received through the commission should such licensees or assignees relocate or be established out of the state and not continue substantial manufacturing in North Dakota. The commission may choose not to enforce the "substantial manufacturing" requirement of this section if there is no person or entity in North Dakota capable of fulfilling the requirement and it is unlikely that in the near future a person or entity would be capable of satisfying the requirement.

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

General Authority: ~~S.L. 1987, ch. 729, § 4~~ NDCC 57-61-01.5

Law Implemented: ~~S.L. 1987, ch. 729, §§ 4, 7~~ NDCC 54-17.5-04, 57-61-01.5

MAY 1992

43-02-01-18.1. Notice of environmental data gathering activities.  
So that the state geologist can decide if a permit is required:

1. Notice So that the state geologist can decide if a permit is required, notice of all planned environmental data gathering activities on lands designated as unsuitable for mining under North Dakota Century Code section 38-14.1-05, except for those specified in subsections 2 and 3, must be provided to the state geologist before beginning any such activities. The notice must include:
  - a. The name, address, and telephone number of the person seeking to conduct environmental data gathering activities.
  - b. The name, address, and telephone number of the person's representative who will be present at and will supervise the activities.
  - c. A narrative describing the activities or a map at a scale of one to twenty-four thousand, or greater, showing the proposed area of activities and the general location of drill holes and trenches, existing and proposed roads, occupied dwellings, topographic features, bodies of surface water, and pipelines.
  - d. A statement of the period of the planned activities.
  - e. A description of all the environmental data gathering activities and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the activities as required by this chapter.

2. Notice of all planned environmental data gathering activities on lands other than those designated as unsuitable for mining under North Dakota Century Code section 38-14.1-05 must be provided to the state geologist before beginning any such activities. The notice must include the same requirements as set forth in subsection 1. The notice required by this section is not required for the following activities: fish and wildlife surveys, premine land use determinations, vegetation surveys, collection of climatological data, topographical surveys, and walk-through cultural resource surveys.
3. Notice is not required for environmental data gathering activities on lands designated as unsuitable for mining under North Dakota Century Code section 38-14.1-05. However, an exploration permit from the state geologist is required for those activities on such lands.

History: Effective March 1, 1991; amended effective May 1, 1992.

General Authority: NDCC 38-12.1-05

Law Implemented: NDCC 38-12.1-05

43-02-03-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-08 except:

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.
2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units and fractional proration units therein in accordance with proration schedules.
3. "Allowable production" means that number of barrels of oil or cubic feet [meters] of natural gas authorized to be produced from the respective proration units and fractional proration units in an allocated pool.
4. "Back allowable" means the authorized accumulative underage or shortage for a given proration unit or fractional proration unit.
5. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [14.44 degrees Celsius] and atmospheric pressure at sea level.
6. "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.



7. "Bottom hole or subsurface pressure" means the pressure in pounds [kilograms] per square inch [square centimeters] gauge under conditions existing at or near the producing horizon.
8. "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.
9. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the commission.
10. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.
11. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.
12. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.
13. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into ~~lease~~ tanks from the ultimate producing interval after casing has been run. A gas well shall be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole shall be considered complete when all provisions of plugging are complied with as set out in this chapter.
14. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.
15. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seventy-three hundredths pounds per square inch [1,034.19 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [14.44 degrees Celsius].
16. "~~Enforcement officer~~ Director" means the ~~enforcement officer~~ director of oil and gas of the industrial commission, the ~~deputy enforcement officer~~ assistant director of oil and gas of the industrial commission, and their designated representatives.

17. "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance, or injection to the pool of a substance or form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of (a) aiding in the lifting of fluids in the well, or (b) stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.
18. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules ~~and regulations~~ or orders of the commission but which has been specifically approved by the commission ~~or by the enforcement officer~~.
19. "Fractional proration unit for oil" means a tract of land containing more or less than forty acres [16.19 hectares] predominantly situated within the confines of a pool.
20. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.
21. "Gas-oil ratio" means the ratio of the gas produced in cubic feet [meters] to a barrel of oil concurrently produced during any stated period.
22. "Gas-oil ratio adjustment" means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.
23. "Gas transportation facility" means a pipeline in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.
24. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.
25. "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.
26. "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.
27. "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes



of casinghead gas which may be produced from the various oil-producing units within that particular pool.

28. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, including commercial electric logs, radioactive logs, dip meter logs, and other related logs.
29. "Marginal unit" means a proration unit or fractional proration unit that cannot produce at a rate equal to the top unit allowable for the proration period for the pool.
30. "Minimum allowable" means the minimum amount of production from an oil or gas well which will encourage the continued operation of such well and below which the well might be threatened with premature ~~abandonment~~ plugging and resulting waste.
31. "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.
32. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
33. "Nonmarginal unit" means a proration unit or a fractional proration unit that can produce at a rate equal to the top unit allowable for the proration period for the pool.
34. "Normal unit allowable" means the amount of allowable production allocated to proration units which are producing from a depth of five thousand feet [1,524 meters] or above.
35. "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.
36. "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well which is the subject of an inquiry or a hearing.
37. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the commission.

38. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.
39. "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.
40. "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.
41. "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.
42. "Proration day" consists of twenty-four consecutive hours which shall begin at seven a.m. and end at seven a.m. on the following day.
43. "Proration month" means the calendar month which shall begin at seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.
44. "Proration period" means for oil the proration month and for gas six consecutive calendar months which shall begin at seven a.m. on the first day of a calendar month and end at seven a.m. on the first day of the seventh succeeding month.
45. "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas proration in allocated pools.
46. "Proration unit for gas" consists of such geographical area as may be prescribed by special pool rules issued by the commission.
47. "Proration unit for oil" consists of a tract of land containing forty acres [16.19 hectares] predominantly situated within the confines of a pool.
48. "Recomplete" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.
49. "Reservoir" means pool or common source of supply.
50. "Saltwater handling facility" means and includes any container such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage, disposal of deleterious

substances obtained, or used, in connection with the drilling or operation of wells.

51. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in. Not to be confused with bottom hole pressure.
52. "Spacing unit" is the area in each pool which is assigned to a well for drilling, producing, and proration purposes in accordance with the commission's rules or orders.
53. "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information in connection with the oil and gas industry.
54. "Tank bottoms" means that accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains basic sediment and water in an amount rendering it unsaleable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.
55. "Top unit allowable for gas" means the maximum number of cubic feet [meters] of natural gas, for the proration period, allocated to a proration unit for gas in an allocated gas pool.
56. "Top unit allowable for oil" means the maximum number of barrels of oil daily for each calendar month allocated to a proration unit for oil in a pool to nonmarginal units.
57. "Treating plant" means any plant permanently constructed or portable used for the purpose of wholly or partially reclaiming, treating, processing, or in any manner making tank bottoms or any other waste oils marketable.
58. "Underage" means the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce in an amount equal to that authorized on the proration schedule.

History: Amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-02. Scope of chapter. This chapter contains general rules of statewide application which have been adopted by the industrial commission to conserve the natural resources of North Dakota, to prevent waste, and to provide for operation in a manner as to protect

correlative rights of all owners of crude oil and natural gas. Special rules, pool rules, field rules, and regulations and orders have been and will be issued when required and shall prevail as against general rules, regulations, and orders if in conflict therewith. However, wherever this chapter does not conflict with special rules heretofore or hereafter adopted, this chapter will apply in each case. The commission may grant exceptions to this chapter, after due notice and hearing, when such exceptions will result in the prevention of waste and ~~operation~~ operate in a manner to protect correlative rights.

History: Amended effective May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-06. Waste prohibited. All operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, or other persons shall at all times conduct their operations in the drilling, equipping, operating, producing, plugging, and ~~abandonment~~ site reclamation of oil and gas wells in a manner that will prevent waste.

History: Amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-03

Law Implemented: NDCC 38-08-03

43-02-03-11. Organization reports. Every person acting as principal or agent for another or independently engaged in the drilling of oil or gas wells, or in the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of crude oil or natural gas in North Dakota shall immediately file with the ~~enforcement officer~~ director the name under which such business is being conducted or operated; and name and post-office address of such person, the business or businesses in which the person is engaged; the plan of organization, and in case of a corporation, the law under which it is chartered; and the names and post-office addresses of any person acting as trustee, together with the names and post-office addresses of any officials thereof. In each case where such business is conducted under an assumed name, such report shall show the names and post-office addresses of all owners in addition to the other information required. A new report shall be filed when and if there is a change in any of the information contained in the original report.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-12. Reservoir surveys. By special order of the commission, periodic surveys may be made of the reservoirs in this state containing oil and gas. These surveys will be thorough and complete and



shall be made under the supervision of the enforcement officer director. The condition of the reservoirs containing oil and gas and the practices and methods employed by the operators shall be investigated. The produced volume and source of crude oil and natural gas, the reservoir pressure of the reservoir as an average, the areas of regional or differential pressure, stabilized gas-oil ratios, and the producing characteristics of the field as a whole and the individual wells within the field shall be specifically included.

All operators of oil wells are required to permit and assist the agents of the commission in making any and all special tests that may be required by the commission on any or all wells.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-13. Record of wells. The enforcement officer director shall maintain a record of official well names, to be known as the well-name register, in which shall be entered: (1) the name and location of each well; (2) the well file number; (3) the name of the operator, or the operator's agent; and (4) any subsequent name or names assigned to the well and approved by the enforcement officer director.

The last name assigned to a well in the well-name register shall be the official name of the well, and the one by which it shall be known and referred to.

The enforcement officer director may, at the officer's director's discretion, grant or refuse an application to change the official name. The application shall be accompanied by a fee of twenty-five dollars, which fee is established to cover the expense of recording the change. If the application is refused, the fee shall be refunded.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-14. Access to records. The commission, enforcement officer director, and their representatives shall have access to all well records wherever located. All owners, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, or servicing wells shall permit the commission, enforcement officer director, and their representatives to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with all state safety rules, and to inspect the records and operation of such wells, and to have access at all times to any and all records of wells.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-14.1. ~~Certification~~ Verification of certified 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~~ director 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~~ director, 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~~ thirty-six 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~~ director 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; amended effective May 1, 1992.

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 a well for oil or, gas, or injection 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~~ approved by the ~~enforcement officer~~ director. 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, and abandoned wells pursuant to section 43-02-03-55 that have not been properly plugged and the sites ~~restored~~ reclaimed. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. 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 and well site reclamation, 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~~ of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical restoration reclamation 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.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, 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, or injection well or the 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 and site reclamation 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~~ director 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; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-16. Application for permit to drill. Before any person shall begin any well-site preparation for the drilling of any well other than surveying and staking, such person shall file an application for permit to drill (form 1) with the ~~enforcement officer~~ director, together with a permit fee of one hundred dollars. Verbal approval may be given for site preparation by the ~~enforcement officer~~ director in extenuating circumstances. No drilling activity shall commence until such application is approved and a permit to drill is issued by the ~~enforcement officer~~ director.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to the nearest lines of a governmental section. Information to be included in such application shall be the



proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed mud program, the proposed casing program, including size and weight thereof, the depth at which each casing string is to be set, and the proposed amount of cement to be used, including the estimated top of cement. The enforcement officer director may request additional information, if deemed necessary.

Prior to the commencement of recompletion operations, an application for permit shall likewise be filed with the enforcement officer director. Included in such application shall be the notice of intention (form 4) to reenter an abandoned a plugged well, or to develop by deepening or plugging back to any source of supply other than the producing horizon in an existing well. Such notice to recomplete any well shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed recompletion procedure, the estimated completed total depth, the casing program to be followed, and the original total depth and the total depth at which the well is to be recompleted.

The enforcement officer director shall deny an application for permit to drill if a well drilled in the location applied for would cause, or tend to cause, waste or violate correlative rights. The chief enforcement officer director of oil and gas shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the enforcement officer director to the commission.

Unless a well is drilling, or has been drilled, below surface casing on the first anniversary of the date of issuance of the permit for the well, the permit shall in all things terminate and be of no further force and effect.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-05

Law Implemented: NDCC 38-08-05

43-02-03-17. Sign on well. Every drilling and producible well associated with the production of oil and gas except plugged wells shall be identified by a sign posted on the derrick or not more than twenty feet [6.10 meters] from the well. The sign shall be of durable construction and the lettering thereon shall be kept in a legible condition and shall be large enough to be legible under normal conditions at a distance of fifty feet [15.24 meters]. The wells on each lease or property shall be numbered in nonrepetitive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of this chapter. Each sign will show the number of the well, the name of the lease (which shall be different or distinctive for each lease), the name of the lessee, owner, or operator, permit number, and the location by quarter-quarter, section, township, and range.

Existing well identification signs that are otherwise in accord with this section except that well locations are shown by quarter section rather than quarter-quarter section shall be allowed to remain.

History: Amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-18. Well spacing. In the absence of an order by the commission setting spacing units for a pool:

1. a. Oil wells ~~drilled and~~ projected to ten thousand feet [3048 meters] or less shall be drilled upon a governmental quarter-quarter section or equivalent lot, located not less than five hundred feet [152.4 meters] to the boundary of such governmental quarter-quarter section or equivalent lot, nor closer than one thousand feet [304.8 meters] to the nearest well permitted to or capable of producing from the same pool. No more than one well shall be drilled to the same pool on any such governmental quarter-quarter section or equivalent lot, except by order of the commission, nor shall any well be drilled on any such governmental quarter-quarter section or equivalent lot containing less than thirty-six acres [14.57 hectares] except by ~~such~~ order of the commission.
- b. Oil wells ~~drilled and~~ projected to more than ten thousand feet [3048 meters] shall be drilled on a governmental quarter section or equivalent lots, located not less than six hundred sixty feet [201.17 meters] to the boundary of such governmental quarter section or equivalent lots. No more than one well shall be drilled to the same pool on any such governmental quarter section or equivalent lots, except by order of the commission, nor shall any well be drilled on any such governmental quarter section or equivalent lots containing less than one hundred forty-five acres [58.68 hectares] except by order of the commission.
2. No well shall be drilled for gas on a tract of land consisting of less than one hundred sixty surface contiguous acres [64.75 hectares] and which is not substantially in the form of a square, in accordance with legal subdivisions of the United States public land surveys or on a governmental quarter section containing less than one hundred forty-five acres [58.68 hectares], and no well shall be drilled closer than one thousand feet [304.8 meters] to any boundary line of the tract or closer than one thousand five hundred feet [457.2 meters] to the nearest well drilling to or capable of producing from the same pool. Provided, that in presently producing gas pools accessible to established gas transportation facilities and not controlled by orders heretofore or hereafter made, no



well shall be drilled for gas on a tract consisting of less than one hundred sixty surface contiguous acres [64.75 hectares], and which is not substantially in the form of a square, in accordance with the legal subdivisions of the United States public land surveys or a square equivalent to a tract of one hundred sixty acres [64.75 hectares], and no well shall be drilled closer than one thousand feet [304.8 meters] to any boundary line of the tract or closer than one thousand five hundred feet [457.2 meters] to a well drilling to or capable of producing from the same pool.

3. Within thirty days ~~after~~, or a reasonable time thereafter, following the discovery of oil or gas in a pool not then covered by an order of the commission, a spacing hearing shall be docketed. Following such hearing the commission shall issue an order prescribing a temporary spacing pattern for the development of the pool. This order shall continue in force for a period of not more than eighteen months at the expiration of which time a hearing shall be held at which the commission may require the presentation of such evidence as will enable the commission to determine the proper spacing for the pool.

During the interim period between the discovery and the issuance of the temporary order, no permits shall be issued for the drilling of an offset well to the discovery well, unless approved by the ~~enforcement officer~~ director. Approval shall be consistent with anticipated spacing for the orderly development of the pool.

Any well drilled within one mile [1.61 kilometers] of an established field shall conform to the spacing requirements in that field except when it is apparent that the well will not produce from the same common source of supply. In order to assure uniform and orderly development, any well drilled within one mile [1.61 kilometers] of an established field boundary shall conform to the spacing and special field rules for the field, and for the purposes of spacing and pooling, the field boundary shall be extended to include the spacing unit for such well and any intervening lands. The foregoing shall not be applicable if it is apparent that the well will not produce from the same common source of supply as wells within the field.

4. ~~In filing an application for permit, the surface distance must be shown between the proposed location and other wells within a radius of one thousand nine hundred eighty feet [603.50 meters] for oil tests, and two thousand six hundred forty feet [804.67 meters] for gas tests.~~
5. If the ~~enforcement officer~~ director denies an application for permit, the ~~officer~~ director shall advise the applicant

immediately of the reasons for denial. The decision of the officer director may be appealed to the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04, 38-08-07

Law Implemented: NDCC 38-08-04, 38-08-07

43-02-03-19. Pit Reserve pit for drilling mud and drill cuttings - Restoration Reclamation of surface. In order to assure a supply of proper material or mud-laden fluid to confine oil, gas, or water to its native strata during the drilling of any well, each operator shall provide, before drilling is commenced, a container or reserve pit of sufficient size to contain said material or fluid, and the accumulation of drill cuttings.

Pits Reserve pits shall not be located in, or hazardously near, stream courses, nor shall they block natural drainages. Pits Reserve pits shall be constructed in such manner so as to prevent contamination of surface or subsurface waters by seepage or flowage therefrom. Under no circumstances shall reserve pits be used for disposal, dumping, or storage of fluids, wastes, and other debris not used in drilling operation other than drill cuttings and fluids used or recovered while drilling and completing the well. The reserve pit must be constructed and reclaimed in a manner that will prevent pollution of the land surface and freshwaters.

When required by the director, the reserve pit or site or appropriate parts thereof must be fenced.

In the construction of a drill site or production facility, access road, and all associated facilities, the topsoil shall be removed, stockpiled, and stabilized for later redistribution on the surface of the location or otherwise reserved for use when it the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top eight inches [20.32 centimeters] of soil.

Within a reasonable time, but not more than one year, after the completion of a well, pits the reserve pit shall be pushed in and leveled reclaimed, or in the case of abandonment a plugged well, the site shall be restored reclaimed. Prior to the commencement of such operations, the operator or the operator's agent shall file a sundry notice of intention (form 4) to level pits or restore the site with the enforcement officer with the director and obtain approval to commence leveling and restoration operations of a reclamation plan. Verbal approval to commence operations reclamation may be given, in which case the operator shall file a subsequent notice with the enforcement officer director reporting the work performed. Any operator may be required to perform additional work if the enforcement officer director determines that the work performed does not constitute proper restoration reclamation, or does not comport with the sundry notice of intention



submitted. The notice shall state the name and location of the well, the name of the operator, and the method of restoration reclamation, and shall include a statement of proposed work. Such work shall include, but not be limited to:

1. The location site or unused portion shall be restored reclaimed as close closely as possible practicable to original condition. This work will be done within a reasonable time after plugging or setting production casing.
2. ~~Gravel~~ After plugging, gravel or scoria shall be removed from and the well site and access road, ~~the~~ reshaped as near as is practicable to original contour.
3. The stockpiled topsoil shall be evenly distributed over the ~~location~~, disturbed area, and where applicable the ~~location~~ shall be reseeded area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.
- ~~3-~~ If required by the enforcement officer, the reserve pit shall be fenced on three sides during drilling operations, and prior to rig release the fourth side shall be fenced. The pit fence shall be maintained until the pit is dry.
- ~~4-~~ If there is any oil on the pits when drilling is completed, it will be removed immediately or the pits will be flagged overhead.
- ~~5-~~ 4. The enforcement officer director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of restoration reclamation of the site and access road and drilling pad.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04

43-02-03-19.1. Fencing, screening, and netting of pits. All open pits and ponds which contain saltwater must be fenced. All pits and ponds which contain oil must be fenced, screened, and netted.

This is not to be construed as requiring the fencing, screening, or netting of a reserve pit or other earthen pit used solely for drilling, completing, recompleting, or plugging unless such pit is not reclaimed in excess of ninety days after completion of the operation.

History: Effective May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04

43-02-03-19.2. Disposal of waste. All waste associated with exploration or production of oil and gas must be properly disposed of in an authorized facility in accord with all applicable local, state, and federal laws and regulations.

This is not to be construed as requiring the offsite disposal of drilling mud or drill cuttings associated with the drilling of a well. However, saltwater used in the drilling and completion operations is to be removed from the reserve pit and disposed of in an authorized disposal facility.

History: Effective May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04

43-02-03-20. Sealing off strata. During the drilling of any oil or natural gas well, all oil, gas, and water strata above the producing horizon shall be sealed or separated where necessary in order to prevent their contents from passing into other strata.

All freshwaters and waters of present or probable value for domestic, commercial, or stock purposes shall be confined to their respective strata and shall be adequately protected by methods approved by the commission. Special precautions shall be taken in drilling and ~~abandoning~~ plugging wells to guard against any loss of artesian water from the strata in which it occurs and the contamination of artesian water by objectionable water, oil, or gas.

All water shall be shut off and excluded from the various oil-bearing and gas-bearing strata which are penetrated. Water shutoffs shall ordinarily be made by cementing casing or landing casing with or without the use of mud-laden fluid.

History: Amended effective May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04

43-02-03-21. Casing and tubing requirements. All wells drilled for oil and natural gas shall be completed with strings of casing which shall be properly cemented at sufficient depths adequately to protect the water-bearing, oil-bearing, or natural gas-bearing strata.

Sufficient cement shall be used on surface casing to fill the annular space in back of the casing to the bottom of the cellar, if any, or to the surface of the ground. All strings of surface casing shall stand cemented under pressure for at least twelve hours before drilling the plug or initiating tests. The term "under pressure" as used herein shall be complied with if one float valve is used or if pressure is otherwise held. Cementing shall be by the pump and plug method, or other methods approved by the ~~enforcement officer~~ director.

All flowing wells shall be tubed; the tubing shall be set as near the bottom as practicable; in all cases shall be above the perforated interval but tubing perforations shall not be above the top of pay; unless authorized by the commission acting by and through the enforcement officer.

All flowing wells must be equipped with tubing and a tubing packer. The packer must be set as near the producing interval as practicable, but in all cases must be above the perforations.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-22. Defective casing or cementing. In any well that appears to have defective casing or cementing, the operator shall report the defect to the enforcement officer director and shall proceed with diligence to correct the defect. If the defect cannot be eliminated, the well shall be properly plugged and abandoned unless otherwise approved by the enforcement officer director.

History: Amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-24. Pulling outside string of casing. In pulling outside strings of casing from any oil or, gas, or injection well, the space outside the casing left in the hole above the casing stub shall be kept and left full of fluid with adequate gel strength and specific gravity, cement, or combination thereof, to seal off all freshwater and saltwater strata and any strata bearing oil or gas not producing. No casing shall be removed without the prior approval of the enforcement officer director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

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 director may require that the hole be straightened. Directional surveys may be required by the enforcement officer director, whenever, in the enforcement officer's director'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 director 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 director free of charge within thirty days of completion. However, the enforcement officer director 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 director'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 director.

If the enforcement officer director denies a request for a permit to directionally drill, the enforcement officer director shall advise the applicant immediately of the reasons for denial. The decision of the enforcement officer director may be appealed to the commission.

History: Amended effective April 1, 1980; April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-26. Multiple zone completions. Multiple zone completions in any pool may be permitted by the enforcement officer director.

An application for a multiple zone completion shall be accompanied by an exhibit showing the location of all wells on applicant's lease and all offset wells on offset leases and shall set forth all material facts on the common sources of supply involved and the manner and method of completion proposed.

Multiply completed wells shall at all times be operated, produced, and maintained in a manner to ensure the complete segregation of the various common sources of supply. The enforcement officer director may require such tests as the officer director deems necessary to determine the effectiveness of the segregation of the different sources of supply.

History: Amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-27. Perforating, fracturing, and chemically treating wells. If damage results to the casing or the casing seat from perforating, fracturing, or chemically treating a well, the operator shall proceed with diligence to use the appropriate method and means for rectifying such damage. If perforating, fracturing, or chemical treating results in irreparable damage which threatens the mechanical integrity of the well, the commission may require the operator to plug and abandon the well.

History: Amended effective January 1, 1983; May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04

43-02-03-30. Notification of fires, ~~breaks,~~ leaks, spills, or blowouts. All persons controlling or operating any oil or gas well or, pipeline, or receiving tank, or storage tank, or receiving and storage receptacle into which crude oil, gas, or water is produced, received, or stored, or through which oil, gas, or water is injected, piped, or transported, shall immediately verbally notify the enforcement officer by letter giving full details concerning all fires which occur at such oil or gas well, or tank, or receptacle on their property, and all such persons shall immediately report all tanks or receptacles struck by lightning and any other fire which destroys oil or gas, and shall immediately report any leaks or breaks in or from tanks or receptacles and pipelines from which oil or gas is escaping or has escaped. In all such reports of fires, breaks, leaks, or escapes, or other accidents of this nature, the location of the well, tank, receptacle, or line break shall be given by section, township, range, and property, so that the exact location thereof can be readily located on the ground. The report shall likewise specify what steps have been taken or are in progress to remedy the situation reported and shall detail the quantity of oil or gas lost, destroyed, or permitted to escape. In case any tank or receptacle is permitted to run over, the amount running over shall be reported as in the case of a leak director within twenty-four hours after discovery of any fire, leak, spill, blowout, or release of fluid. The verbal notification must be followed within ten days by a written report of the incident, if deemed necessary by the director. Such report must include, but not be limited to, the following information: the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, cause of the accident, and action taken to prevent reoccurrence. The signature, title, and telephone number of the company representative must be included on such report. If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall also notify the surface owners or surface tenants upon whose land the incident occurred or traveled.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.  
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 director. 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 director, 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 director. 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 director 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 director at the well site prior to proceeding with plugging or completion operations. Within thirty days after completion, two copies of all logs and surveys run shall be submitted to the enforcement officer director free of charge. However, if the enforcement officer director finds that the directional survey of a well is needed for the timely conduct of business, the enforcement officer director may require the filing of the survey immediately after completion. In addition, operators shall file 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 director 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. The six-month period must commence on the date the well is completed or the date the written request is received, whichever is earlier. If the written request accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period will commence on the date the well is spudded.

Approval must be obtained from the enforcement officer director 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 a sundry notice (form 4) with the enforcement officer director. The report shall present a detailed account of all work done and the date of such work; 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~~ sundry notice (form 4) of such installation. The notice shall include all pertinent information on the pump and the operation thereof including the date of such installation, 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; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-33. Notice of intention to ~~abandon~~ plug well. The operator or the operator's agent shall file a notice of intention (form 4) to plug with the ~~enforcement officer~~ director, and obtain the approval of the ~~enforcement officer~~ director, prior to the commencement of plugging operations. The notice shall state the name and location of the well, the name of the operator, and the method of ~~abandonment~~ plugging, which must include a detailed statement of proposed work. In the case of a recently completed test well that has not had production casing in the hole, the operator may commence plugging by giving reasonable notice to, and securing verbal approval of, the ~~enforcement officer~~ director as to the method of plugging, and the time plugging operations are to begin. Within thirty days after the plugging of any well has been accomplished, the owner or operator thereof shall file a plugging record (form 7), and, if requested, a copy of the cementer's trip ticket or job receipt, with the ~~enforcement officer~~ director setting forth in detail the method used in plugging the well.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-34. Method of plugging. ~~Before any~~ 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. After plugging, the site must be reclaimed pursuant to section 43-02-03-19.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-39. Limiting gas-oil ratio. In the event the commission has not set a limiting gas-oil ratio for a particular oil pool, the operator of any well in such pool whose gas-oil ratio exceeds two thousand shall demonstrate to the enforcement officer director that production from such well should not be restricted pending a hearing before the commission to establish a limiting gas-oil ratio. The enforcement officer director may restrict production of any well with a gas-oil ratio exceeding two thousand, until the commission can determine that restrictions are necessary to conserve reservoir energy.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-40. Gas-oil ratio test. Each operator shall take a gas-oil ratio test within thirty days following the completion or recompletion of an oil well. Each test shall be conducted under the method and conditions as prescribed by the enforcement officer director. After the discovery of a new pool, each operator shall make additional gas-oil ratio tests as directed by the enforcement officer director or provided for in field rules. During tests each well shall be produced at a rate equal to or not exceeding its allowable by more than twenty-five percent. No well shall be given an allowable greater than the amount of oil produced on official test during a twenty-four-hour period. The enforcement officer director shall drop from the proration schedule any proration unit for failure to make such test as herein above described until such time as a satisfactory test has been made, or satisfactory explanation given. In the absence of proration, each well shall be produced at a maximum efficient rate during tests. The enforcement officer director will shut in any well for failure to make such test until such time as a satisfactory test can be made, or satisfactory explanation given. The results of all gas-oil ratio tests shall be submitted to the enforcement officer director on form 9, which shall be accompanied by a statement, made under oath, from the person actually performing such tests, that the data on form 9 is true and correct.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-41. Subsurface pressure tests. The operator shall make a subsurface pressure test on the discovery well of any new pool hereafter discovered and shall report the results thereof to the enforcement officer director within thirty days after the completion of such discovery well. The reports shall include a copy of the pressure chart of the test. Drill stem test pressures are not normally acceptable but may be used if permission is obtained from the enforcement officer director. In the absence of field rules, after the



discovery of a new pool, each operator shall make additional reservoir pressure tests as directed by the ~~enforcement officer~~ director. All tests shall be made by a person qualified by both training and experience to make such tests and with an approved subsurface pressure instrument. All wells shall remain completely shut in for at least twenty-four hours prior to the test. The subsurface determination shall be obtained as close as possible to the midpoint of the productive interval of the reservoir. The report of the subsurface pressure test shall state the name of the pool, the name of the operator and lease, the well name, the well file number, the subsea depth in feet [meters] of the reservoir datum plane, and wellhead elevation above sea level, the depth in feet [meters] to the top of the producing formation or top of perforations, whichever is the lower, the date of the tests, the total number of hours the well was shut in prior to the test, the subsurface temperature in degrees Fahrenheit [Celsius] at the test depth, the depth in feet [meters] at which the subsurface pressure test was made, the observed pressure in pounds [kilograms] per square inch [square centimeters] gauge at the test depth, and the corrected pressure computed from applying to the observed pressure the appropriate corrections for calibration, temperature, and difference in depth between test depth and reservoir datum plane.

The ~~enforcement officer~~ director may shut in any well for failure to make such test as herein above described until such time as a satisfactory test has been made or satisfactory explanation given.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-42. Commingling of oil from pools. Except as directed by the commission after hearing, each pool shall be produced as a single common reservoir without commingling in the well bore of fluids from different pools. After fluids from different pools have been brought to surface, such fluids may be commingled provided that the amount of production from each pool is determined by a method approved by the ~~enforcement officer~~ director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-44. Metered casinghead gas. The owner of a well shall not be required to measure the exact amount of casinghead gas produced and used by the owner for fuel purposes in the development and normal operation of the well; however, an estimate of the volume used if any and the amount of any gas flared shall be reported monthly to the ~~enforcement officer~~. The amount of casinghead gas sold in small quantities for use in the field may be calculated upon a basis generally

acceptable in the industry, or upon a basis approved by enforcement officer in lieu of meter measurements. All casinghead gas produced and sold or transported away from a lease shall be metered and reported monthly to the enforcement officer director in units of one thousand cubic feet [28.32 cubic meters] (MCF) computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute (PSIA) [1,034.19 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [14.44 degrees Celsius]. On or before the fifth day of the second month succeeding that in which production occurs the operator shall file a production report (form 5a) to the enforcement officer showing the amount of gas produced from each well during the reporting period, and the disposition of the gas. Associated gas production may not be transported from a well premises or central production facility until its volume has been determined through the use of properly calibrated measurement equipment. All measurement equipment and volume determinations must conform to American gas association (AGA) standards. The operator of a well shall notify the director of the connection date to a gas gathering system, the metering equipment, transporter, and purchaser of the gas. Any gas produced and used on lease for fuel purposes or flared, must be estimated and reported in accordance with section 43-02-03-52.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

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 director for good reason. The estimated volume of gas used and flared shall be reported to the enforcement officer director on or before the fifth day of the second month succeeding that in which gas is produced.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-47. Produced water. Operators shall report monthly to the enforcement officer director the amount of water produced by each well.

History: Amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-48. Central tank battery or central production facility. Production shall not be transported from a lease, tank battery, or



central production facility until its volume has been determined through use of properly calibrated meter measurements or tank measurements. Commingling of production from two or more wells in a storage facility shall not be allowed without permission from the enforcement officer.

The enforcement officer shall have authority to approve requests to consolidate production equipment at a central location for the express purpose of separating, metering, holding, and marketing of production from two or more productive units, provided all wells producing into the centralized facility have common ownership (working interests, royalty interests, and overriding royalty), and the production from each well can be accurately determined at reasonable intervals. The commingling of production in a central facility from wells having diverse ownership (working interests, royalty interests, and overriding royalty) may be approved by the enforcement officer provided such production is accurately measured prior to commingling.

The application for permission to commingle oil in a central tank battery shall include the following:

1. Plats of the leases showing thereon the wells on the leases and the formations in which they are completed.
2. Schematic drawings of the facilities for measuring, testing, sampling, routing, and transferring production. The name of the manufacturer, size, and type of equipment installed shall also be included. The meters shall be checked against actual tank measurements or against a master meter that has been calibrated against actual volume measurements at three-month intervals and the results of the tests reported to the enforcement officer on form 4.
3. Consent in writing from all persons owning an interest in the production to be commingled when wells are not metered individually.
4. Title opinions showing ownership of all interests to be commingled when wells are not individually metered.

The use of automatic custody transfer equipment shall also be permitted after receiving approval from the enforcement officer.

Measurement of oil. Oil production may not be transported from a well premises or central production facility until its volume has been determined through the use of properly calibrated meter measurements or tank measurements. All meter and tank measurements, and volume determinations must conform to American petroleum institute (API) standards.

All allocation and sales meters must be reported to the director prior to installation and use. The reports must include the name of the manufacturer and the size and type of the metering equipment.



History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-48.1. Central production facility - Commingling of production.

1. The director shall have the authority to approve requests to consolidate production equipment at a central location.
2. Commingling of production from two or more wells in a central production facility is prohibited unless approved by the director. There are two types of central production facilities in which production from two or more wells is commingled that may be approved by the director.
  - a. A central production facility in which all production going into the facility has common ownership (working interests, royalty interests, and overriding royalties).
  - b. A central production facility in which production going into the facility has diverse ownership.
3. The commingling of production in a central production facility from two or more wells having common ownership may be approved by the director provided the production from each well can be accurately determined at reasonable intervals. Commingling of production in a central production facility from two or more wells having diverse ownership may be approved by the director provided the production from each well is accurately metered prior to commingling. Commingling of production in a central production facility from two or more wells having diverse ownership that is not metered prior to commingling may only be approved by the commission after notice and hearing.
  - a. Common ownership central production facility. The application for permission to commingle oil and gas in a central production facility with common ownership must include the following:
    - (1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well and flow lines from each well that will produce into the facility.
    - (2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps etc. should be shown.

(3) A current or most recent division order or title opinion showing the ownership of each well to be commingled.

(4) An explanation of the procedures or method to be used to determine, accurately, individual well production at periodic intervals. Such procedures or method shall be performed at least once every three months.

A copy of all tests are to be filed with the director within thirty days after the tests are completed.

b. Diverse ownership central production facility. The application for permission to commingle oil and gas in a central production facility having diverse ownership must include the following:

(1) A plat or map showing thereon the location of the central facility and the name, well file number, and location of each well, and flow lines from each well that will produce into the facility.

(2) A schematic drawing of the facility which diagrams the testing, treating, routing, and transferring of production. All pertinent items such as treaters, tanks, flow lines, valves, meters, recycle pumps etc. should be shown.

(3) The name of the manufacturer, size, and type of meters to be used. The meters must be proved at least once every three months and the results reported to the director within thirty days following the completion of the test.

4. Any changes to a previously approved central production facility must be reported to, and approved by, the director.

History: Effective May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-49. Oil tanks and ~~firewalls~~ dikes. Oil shall not be stored or retained in earthen reservoirs or in open receptacles. Dikes or ~~firewalls~~ constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the maximum total volume stored must be erected and kept around all oil tanks or battery of tanks when deemed necessary by the ~~enforcement officer~~ director. Accidentally discharged oil must be properly removed and may not be allowed to remain standing within the diked area.

Metal identification Numbered metal security seals shall be properly utilized on all delivery tank oil access valves and access points to secure the tank or battery of tanks.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-50. Tank cleaning permit. No tank bottom shall be removed from any tank used for the storage of crude oil unless and until application for a tank cleaning permit is approved by the ~~enforcement officer~~ director. To obtain approval, the owner shall submit a report showing an accurate gauge of the contents of the tank and the amount of merchantable oil determinable from a representative sample of the tank bottom by the standard centrifugal test as prescribed by the American petroleum institute's code, number 25, section 5, for measuring, sampling, and testing crude oil. The amount of merchantable oil shall be shown as a separate item on the report and shall be charged against the allowable of the unit or units producing into such tank or pit where such merchantable oil accumulated. Nothing contained in this section shall apply to the use of tank bottoms on the originating lease where owner retains custody and control of the tank bottom or to the treating of tank bottoms by an operator where the merchantable oil recovered is disposed of through a duly authorized transporter and is reported to the ~~enforcement officer~~ director. Nothing contained in this section shall apply to reclaiming of pipeline, break oil or the treating of tank bottoms at a pipeline station, crude oil storage terminal, or refinery or to the treating by a gasoline plant operator of oil and other catchings collected in traps and drips in the gas gathering lines connected to gasoline plants and in scrubbers at such plants.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

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, capacity of the plant contemplated, 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. The operator of any portable treating plant shall notify the director as to all changes in location of said plant. 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; May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04

43-02-03-52. Report of oil production. The producer and operator of each and every well in all pools every pool shall, on or before the first day of the second month succeeding the month in which production occurs, file with the enforcement officer director a sworn statement showing the amount of production made by each such well upon forms furnished therefor, or approved computer sheets no larger than eight and one-half by fourteen inches [21.59 by 35.56 centimeters]. Wells for which reports of production are not received by the close of business on said first day of the month shall be shut in for a period not to exceed thirty days. The enforcement officer director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any oil produced during such shut-in period shall be deemed illegal oil and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04

43-02-03-52.1. Report of gas produced in association with oil. The operator of each well in every pool shall, on or before the fifth day of the second month succeeding the month in which production occurs, file with the director a sworn statement showing the amount of gas produced by each such well upon forms furnished therefor, or approved computer sheets. Wells for which reports of production are not received by the close of business on said fifth day of the month must be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any gas produced during such shut-in period must be deemed illegal gas and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Effective May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04

43-02-03-53. Saltwater handling facilities.

1. All saltwater liquids or brines produced with oil and natural gas shall be disposed of without pollution of freshwater

supplies. At no time shall saltwater liquids or brines be allowed to flow over the surface of the land or into streams.

2. No surface pits shall be used to store saltwater.
3. Underground disposal of saltwater liquids and brines shall be in accordance with chapter 43-02-05.
4. Surface tanks are an acceptable facility provided that:
  - a. They are devoid of leaks and constructed of materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition.
  - b. Dikes constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the maximum total volume stored shall be constructed erected and kept around all saltwater and brine tanks if or battery of tanks when deemed necessary by the director. Accidentally discharged saltwater liquids or brines must be properly removed and may not be allowed to remain standing within the diked area.
  - ~~c. The above conditions may be waived by the enforcement officer for tanks presently in service and in good condition.~~
5. Surface pits are not an acceptable facility. Lined pits previously approved may be utilized provided that:
  - a. A monitoring system be maintained to ascertain the integrity of the impermeability of the sides and bottom of the facility.
  - b. Provisions be made to prevent livestock from gaining access to the stored substances.
6. This section shall not apply to:
  - a. ~~Mud pits or reserve~~ Reserve pits currently used in drilling, deepening, testing, reworking, or plugging of a well.
  - b. Pits used solely for the purpose of burning vented casinghead gas as provided in section 43-02-03-45.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04



43-02-03-54. Investigative powers. Upon receipt of a written complaint from any surface owner or lessee, royalty owner, mineral owner, local, state, or federal official, or any other interested party, alleging a violation of the oil and gas conservation statutes or any rule, regulation, or order of the commission, the enforcement officer director shall immediately cause an investigation of such complaint to be made. The enforcement officer director may also conduct such investigations on the enforcement officer's director's own initiative or at the direction of the commission. If, after such investigation, the enforcement officer director affirms that cause for complaint exists, the enforcement officer director shall report the results of the investigation to the person who submitted the complaint, if any, to the person who was the subject of the complaint and to the commission. The commission shall institute such legal proceedings as, in its discretion, it believes are necessary to enjoin further violations.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04, 38-08-12

Law Implemented: NDCC 38-08-04, 38-08-12

43-02-03-55. 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 constitutes abandonment of a producing well. 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 reclaimed pursuant to applicable rules of the commission. The enforcement officer director 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 director's satisfaction that the well may be used for alternative purposes related to the production of oil or gas. The enforcement officer director 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 director.

The drilling of a well may be suspended upon approval of the enforcement officer director. 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 director, when drilling operations have been suspended for six months thirty days, the well must be plugged and the site restored reclaimed pursuant to applicable rules of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-57. Determination of gas well potential. After the completion or recompletion of a gas well, the operator shall conduct tests to determine the daily open flow potential of the well. The test results together with an analyses of the gas shall be reported to the ~~enforcement officer~~ director within thirty days after completion of the well.

Operators shall conduct tests to determine the daily open flow potential volumes of gas wells from which gas is being used or marketed in accordance with an order of the commission or at the request of the ~~enforcement officer~~ director. Test procedures shall be those commonly used in the industry unless otherwise approved by the ~~enforcement officer~~ director.

History: Amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-59. Production from gas wells to be measured and reported. All gas produced shall be accounted for by metering or other methods approved by the enforcement officer. All gas produced shall be reported to the enforcement officer by the common purchaser of the gas. Gas produced from a gas well and delivered to a gas transportation facility shall be reported by the owner or operator of the gas transportation facility. Gas produced from a gas well, and required to be reported under this section, which is not delivered to and reported by a gas transportation facility, shall be reported by the operator of the well. Gas production may not be transported from a gas well premises until its volume has been determined through the use of property calibrated measurement equipment. All measurement equipment and volume determinations must conform to American gas association (AGA) standards. Gas production reports shall be filed in accordance with section 43-02-03-52 with the director on or before the fifth day of the second month succeeding that in which production occurs.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-60.1. Valuation of flared gas. The value of gas flared from an oil well in violation of North Dakota Century Code section 38-08-06.4 must be deemed one dollar seventy-four cents per thousand cubic feet [28.32 cubic meters] (MCF). This valuation will be periodically reviewed by the industrial commission.

History: Effective October 1, 1990; amended effective May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-06.4



43-02-03-65. Authorization for production, purchase, and transportation. When necessary the commission shall hold a hearing to set the normal unit allowable for the state.

The commission shall consider all evidence of market demand for oil and gas, including sworn statements of individual demand as submitted by each purchaser or buyer in the state, and determine the amount to be produced from all pools. The amount so determined will be allocated among the various pools in accordance with existing regulations and in each pool in accordance with regulations governing each pool. In allocated pools, effective the first day of each proration period, the commission will issue a proration schedule which will authorize the production of oil and gas from the various units in strict accordance with the schedule, and the purchase and transportation of such production. Allowable for wells completed after the first day of the proration period will become effective from the date of well completion. A supplementary order will be issued by the commission to the operator of a newly completed or recompleted well, and to the purchaser or transporter of the production from a newly completed or recompleted well, establishing the effective date of completion, the amount of production permitted during the remainder of the proration period, and the authority to purchase and transport same from said proration units and fractional proration units.

When it appears that a single normal unit allowable will not supply the amounts of oil or gas required by the markets available, the commission may designate separate marketing districts within the state and prescribe separate normal unit allowables for each district.

A marginal unit shall be permitted to produce any amount of oil which it is capable of producing up to and including the top unit allowable for that particular pool for the particular proration period; provided the operator of such unit shall file with the commission for a supplemental order covering the difference between the amount shown on the proration schedule and the top unit allowable for the pool. The commission shall issue such supplemental order setting forth the daily amount of production which such unit shall be permitted to produce for the particular proration period and shall furnish such supplemental order to the operator of the unit and a copy thereof to the transporter authorized to transport the production from the unit.

Underages may be made up or unavoidable and lawful overages compensated for during the third proration period next following the proration period in which such underages or overages occurred.

All back allowables authorized for purchase will be published in a proration schedule. No back allowable, except as provided in section 43-02-03-64, shall be placed on the proration schedule unless requested by the producer. In requesting back allowables, the producer shall indicate the reason for the underage and the ~~enforcement officer~~ director may, at his discretion, approve any portion of the request. The usual grounds for back allowable which may be considered are (1) failure of purchaser to transport assigned allowable, (2) mechanical

failure or repairs to well equipment during the proration period, and (3) testing or gathering engineering data.

In order to preclude premature ~~abandonment~~ plugging, a common purchaser within its purchasing area is authorized and directed to make one hundred percent purchases from units of settled production producing ten barrels or less daily of oil, or sixty thousand cubic feet [1,699.01 cubic meters] or less daily of gas, in lieu of ratable purchases or takings. Provided such purchaser's takings are curtailed below ten barrels per unit of oil daily, or below sixty thousand cubic feet [1,699.01 cubic meters] per unit of gas daily, then such purchaser is authorized and directed to purchase equally from all such units within its purchasing area regardless of their producing ability insofar as they are capable of producing.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-66. Application for allowable on new oil wells. No well shall be placed on the proration schedule until notice of completion has been executed and filed with the ~~enforcement officer~~ director.

The first four wells in any field or pool hereafter discovered shall be allowed to produce any amount of oil it is capable of producing but in no case to exceed a maximum of two hundred barrels of oil per day if the same can be done without waste and provided further, that a market can be obtained for such oil produced.

The allowable production provided for above shall continue in effect for a period of not more than eighteen months from the date of completion of the first well in the field or pool, or until the completion of the fifth well in the pool, whichever shall occur first, and shall produce thereafter, only pursuant to the general rules and regulations of the commission.

The producer or operator of any well claiming a discovery allowable under this section shall report to the ~~enforcement officer~~ director, not later than the tenth of each month, the results of a potential test, made on or about the first day of the month, in accordance with the provisions of section 43-02-03-40.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-77. Application for unitized management under commission order. Any plan of unitized management or any injection into a reservoir for the purpose of maintaining reservoir pressure or for

enhanced recovery operations shall be permitted only by order of the commission after notice and hearing. The application for an order shall include a complete statement of all matters required by North Dakota Century Code section ~~38-08-09.3~~ and North Dakota Administrative Code ~~chapter 43-02-05~~ 38-08-09 et seq.

The application shall be submitted to the commission, in duplicate, at least forty-five days prior to the date requested for such hearings and shall be accompanied by all engineering, geological, and other technical exhibits which will be introduced at the hearing.

In addition, the application shall set forth that all the provisions of North Dakota Century Code section 38-08-09.5 have been complied with.

History: Amended effective November 1, 1982; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-09

Law Implemented: NDCC 38-08-09

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~~ director 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 and purchased by them from each lease during the reported month. 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~~ director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-81. Authorization to transport oil from lease. Before any crude oil is transported from a lease, the operator of the lease shall file with the ~~enforcement officer~~ director, and obtain the ~~enforcement officer's~~ director's approval, a producer's certificate of compliance and authorization to transport oil from lease (form 8).

Oil transported from a lease before the authorization is obtained or if such authorization has been revoked shall be considered illegal oil.

The ~~enforcement officer~~ director shall revoke the producers certificate of compliance and authorization to transport oil from lease



for failure to comply with any rule, regulation, or order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-81.1. Reports of ~~purchasers~~ purchases for resale and transporters transporting of dry gas. ~~On or before the fifth day of the second month succeeding that in which dry gas is received, purchasers and transporters including pipeliners~~ Transporters of and purchasers for the resale of dry gas shall file a report (form 8a) with the ~~enforcement officer~~ director showing the amount of gas taken from each plant or well during the monthly reporting period.

All gas ~~produced and sold or transported away from a lease~~ shall be ~~metered and~~ reported monthly to the ~~enforcement officer~~ director in one thousand cubic feet [28.32 cubic meters] (MCF) computed at a pressure of fourteen and seventy-three hundredths pounds per square inch [1,034.19 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [14.44 degrees Celsius].

~~Prior to removing any gas from a plant or well, purchasers and transporters shall obtain an approved copy of a certificate of compliance and authorization to transport gas from the lease or gas plant (form 8a) from either the operator or the enforcement officer.~~

History: Effective January 1, 1983; amended effective May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-82. Refinery reports. Each refiner of oil within North Dakota shall furnish for each calendar month a report containing information and data respecting crude oil and products involved in such refiner's operations during each month. The report for each month shall be prepared and filed on or before the fifteenth of the next succeeding month with the ~~enforcement officer~~ director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-83. Gas processing plant reports. Each operator of a gas processing plant, cycling plant, or any other plant at which gas processing, gasoline, butane, propane, condensate, kerosene, oil, or other products are extracted from gas shall furnish to the ~~enforcement officer~~ director a report containing the amount of gas received from each lease or well on form 12a.

Crude oil recovered shall be reported to the ~~enforcement officer~~ director, on form 5 on or before the close of business on the first day of the second month succeeding that in which oil is removed. Other operations shall be reported to the ~~enforcement officer~~ director, on form 12 and 12a, on or before the fifth day of the second month following that in which gas is processed.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-88.1. Special procedures for pooling, underground disposal of saltwater, commingling, converting mineral wells to freshwater wells, and central tank battery or central production facilities applications.

1. Applications for pooling under subsection 1 of North Dakota Century Code section 38-08-08, for underground disposal of saltwater under chapter 43-02-05, for commingling in one well bore the fluids from two or more pools under section 43-02-03-42, for converting a mineral well to a freshwater well under section 43-02-03-35, and for establishing central tank batteries or central production facilities under section 43-02-03-48.1, must be accompanied by an affidavit signed by the applicant or the applicant's representative. The affidavit must contain or refer to attachments that contain all the information required by law as well as all the information the applicant wants the commission to consider in deciding whether to grant the application. The affidavit must designate an employee or representative of the applicant to whom the commission can direct inquiries regarding the application. Five copies of the application and affidavit and any accompanying materials must be submitted, unless the director consents to fewer copies.
2. The applications referred to in subsection 1 will be advertised and scheduled for hearing as are all other applications received by the commission. The applicant, however, unless required by the director, need not appear at the hearing scheduled to consider the application. The affidavit referred to in subsection 1 will be made an exhibit in the case unless the applicant fails to appear at the hearing after requested to do so by the director. Any interested party may appear at the hearing to oppose or comment on the application. Any interested party may also submit written comments on or objections to the application prior to the hearing date. Such submissions will be part of the record in the case.
3. The director is authorized, on behalf of the commission, to grant or deny the applications referred to in subsection 1.

4. In any proceeding under this section, the applicant, at the hearing, may supplement the affidavit required in subsection 1 by offering testimony and exhibits in support of the application.
5. In the event the applicant is not required by the director to appear at the hearing and an interested party does appear to oppose the application or submits a written objection to the application, the hearing officer shall continue the hearing to a later date, keep the record open for the submission of additional evidence, or take any other action necessary to ensure that the applicant, who does not appear at the hearing as the result of subsection 2, is accorded due process.

History: Effective May 1, 1992.

General Authority: NDCC 38-08-04, 38-08-11

Law Implemented: NDCC 38-08-04, 38-08-08

43-02-03-90. Notice of hearing Hearings - Complaint proceedings - Emergency proceedings - Other proceedings. Upon the institution of a proceedings by application or by motion of the commission;

1. Except as more specifically provided in North Dakota Century Code section 38-08-11, the rules of procedure established in subsection 1 of North Dakota Century Code section 28-32-05 apply to contested case proceedings involving a complaint and a specific-named respondent.
2. For noncontested case proceedings or proceedings that do not involve a complaint and a specific-named respondent the commission shall give at least ~~ten~~ fifteen days' notice (except in emergency) of the time and place of hearing thereon by one publication of such notice in ~~newspapers~~ a newspaper of general circulation ~~published at~~ in Bismarck, North Dakota, and in a newspaper of general circulation 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.
3. 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; May 1, 1992.

General Authority: NDCC 38-08-11

Law Implemented: NDCC 38-08-11

43-02-03-90.1. Investigatory hearings. The commission may hold investigatory hearings upon the institution of a proceeding by application or by motion of the commission. Notice of the hearing must be served upon all parties personally or by certified mail at least five days before the hearing.

History: Effective May 1, 1992.

General Authority: NDCC 28-32-08

Law Implemented: NDCC 28-32-08

43-02-03-90.2. Official notice. The evidence in each case heard by the commission, unless specifically excluded by the hearing officer, includes the oil, water, and gas production records on file with the commission.

History: Effective May 1, 1992.

General Authority: NDCC 28-32-06

Law Implemented: NDCC 28-32-06

43-02-03-90.3. Petitions for review of recommended order and oral arguments prohibited. Neither petitions for review of a recommended order nor oral arguments following issuance of a recommended order and pending issuance of a final order are allowed.

History: Effective May 1, 1992.

General Authority: NDCC 28-32-13

Law Implemented: NDCC 28-32-13

43-02-03-90.4. Notice of order by mail. The commission may give notice of an order by mailing the order, and findings and conclusions upon which it is based, to all parties by regular mail provided it files an affidavit of service by mail indicating upon whom the order was served.

History: Effective May 1, 1992.

General Authority: NDCC 28-32-13

Law Implemented: NDCC 28-32-13



43-02-03-90.5. Service and filing. All pleadings, notices, written motions, requests, petitions, briefs, and correspondence to the commission or commission employee from a party (or vice versa) relating to a proceeding after its commencement, must be filed with the director and entered into the commission's official record of the procedure provided the record is open at the time of receipt. All parties shall receive copies upon request of any or all of the evidence in the record of the proceedings. The commission may charge for the actual cost of providing copies of evidence in the record. Unless otherwise provided by law, filing shall be complete when the material is entered into the record of the proceeding.

History: Effective May 1, 1992.  
General Authority: NDCC 28-32-13  
Law Implemented: NDCC 28-32-13

43-02-03-91. Rehearing. Within thirty days after the entry of any order or decision of the commission or the enforcement officer, any person affected thereby may file with the commission an application for rehearing in respect of any matter determined by such order or decision, setting forth the respect in which such order or decision is believed to be erroneous. The commission shall grant or refuse any such application in whole or in part within thirty days after the same is filed. In the event the rehearing is granted, the commission may enter such new order or decision after rehearing as may be required under the circumstances. Repealed effective May 1, 1992.

History: Amended effective April 30, 1981; January 1, 1983; September 1, 1987.  
General Authority: NDCC 38-08-13  
Law Implemented: NDCC 38-08-13

43-02-04-03. Applications - Contents and approval. An application for a natural gas well status determination under the Natural Gas Policy Act of 1978 shall be made upon forms furnished by the industrial commission and shall be executed by the operator of the well for which the status determination is requested. The original and one copy of the application, together with an application fee of one hundred dollars, shall be filed with:

Enforcement Officer Director  
Oil and Gas Division  
600 East Boulevard  
Bismarck, North Dakota 58505

Only those applications that fully conform with the rules of the industrial commission and the federal energy regulatory commission shall be deemed to be filed for purposes of retroactive collections in accordance with the provisions of the Natural Gas Policy Act of 1978. Each application shall contain, in addition to all other requirements, an affidavit executed by the operator stating:



1. That a copy of the application has been served on the purchaser of the gas.
2. That the public notice required in section 43-02-04-04 has been properly given.
3. The dates of such publications.

History: Effective February 1, 1979; amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-01, 38-08-03

43-02-04-04. Notice. An applicant shall give notice of intention to file an application for a natural gas well status determination by publishing a single notice of the application in the Bismarck Tribune and also the official county newspaper where the well is located. The notice shall be published not more than ten days prior to filing the application with the ~~enforcement officer~~ director. The notice shall contain the following information:

1. The name of the applicant.
2. The location of the well.
3. The well status determination being requested.
4. That any person may intervene by filing a notice of intervention with:

~~Enforcement Officer~~ Director  
Oil and Gas Division  
600 East Boulevard  
Bismarck, North Dakota 58505

5. That the notice of intervention must state that the intervenor supports or opposes the requested well status determination.
6. That the intervention must be filed with the ~~enforcement officer~~ director within ten days after the date of publication.

History: Effective February 1, 1979; amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-01, 38-08-03

43-02-04-05. Determination by the ~~enforcement officer~~ director. If notice of intervention by an opponent is not filed, or not filed within the prescribed time, the ~~enforcement officer~~ director may make a determination and issue an order in the same manner as a permit to drill

is issued or denied pursuant to section 43-02-03-16, or the ~~enforcement officer~~ director may defer the determination to the industrial commission. An applicant may appeal an adverse well status determination made by the ~~enforcement officer~~ director to the industrial commission.

History: Effective February 1, 1979; amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-01, 38-08-03

43-02-04-06. Hearing. The industrial commission shall hold a hearing and make a well status determination in the following situations:

1. When an opponent to a requested well status determination files a notice of intervention within the prescribed time.
2. When an applicant appeals an adverse well status determination made by the ~~enforcement officer~~ director.
3. When the ~~enforcement officer~~ director has deferred a determination to the industrial commission.

The notice of hearing shall be published, the hearings shall be conducted, and the order shall be issued in the same manner as other hearings before the industrial commission.

History: Effective February 1, 1979; amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-01, 38-08-03

43-02-04-07. Final determination. A well status determination shall be final:

1. Thirty days following the determination by the ~~enforcement officer~~ director, unless an appeal is made to the industrial commission within that time;
2. Thirty days following the determination by the industrial commission, unless a request for a rehearing is made within that time; or
3. The date a request for a rehearing is denied.

History: Effective February 1, 1979; amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-01, 38-08-03

43-02-04-08. Notice of determination. When a well status determination becomes final, the ~~enforcement officer~~ director shall give written notice of the determination to the federal energy regulatory commission.

History: Effective February 1, 1979; amended effective January 1, 1983; May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-01, 38-08-03

43-02-05-04. Permit requirements.

1. No underground injection may be conducted without obtaining a permit from the industrial commission after notice and hearing. An application for a permit for underground injection shall be submitted to the commission at least thirty days prior to the hearing. The application shall be on forms provided by the commission and shall include at least the following information:
  - a. The name and address of the operator of the injection well.
  - b. A map showing the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map should show the number, or name, and location of all producing wells, injection wells, ~~abandoned~~ plugged wells, dry holes, and water wells. The map should also show faults, if known or suspected.
  - c. A tabulation of data on all wells of public record within the area of review which penetrate the proposed injection zone. Such data should include a description of each well's type, construction, date drilled, location, depth, record of plugging or completion, and any additional information the commission may require.
  - d. Average and maximum daily rate and volume of fluids to be injected.
  - e. Average and maximum injection pressure.
  - f. Source, and appropriate analysis of injection fluid if other than produced water, and compatibility with the receiving formation.
  - g. Appropriate geological data on the injection zone and confining zones including lithologic description, geological name, thickness, and depth.

- h. Geologic name, and depth to bottom of all underground sources of drinking water which may be affected by the injection.
  - i. Schematic drawings of the surface and subsurface construction details of the system.
  - j. Proposed injection program.
  - k. All available logging and testing data on the well.
  - l. The need for corrective action on wells penetrating the injection zone in the area of review.
  - m. The estimated fracture pressure of the confining zone.
  - n. Certification that all landowners within the area of review have been notified of the proposed injection well and that a hearing will be held.
- 2. Permits may contain such terms and conditions as the commission deems necessary.
  - 3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute.
  - 4. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
  - 5. No person shall commence construction of an underground injection well until the commission has issued a permit for the well.
  - 6. Permits are transferable only with approval of the commission.
  - 7. Permits may be modified by the commission.
  - 8. Before a permit for underground injection will be issued, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.
  - 9. All injection wells permitted before November 1, 1982, shall be deemed to have a permit for purposes of this section; however, all such prior permitted wells are subject to all other requirements of this chapter.

History: Effective November 1, 1982; amended effective May 1, 1992.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-06. Construction requirements.

1. All injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The casing and cement used in construction of each new injection well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, all of the following factors shall be considered:
  - a. Depth to the injection zone.
  - b. Depth to the bottom of all underground sources of drinking water.
  - c. Estimated maximum and average injection pressures.
  - d. Fluid pressure.
  - e. Estimated fracture pressure.
  - f. Physical and chemical characteristics of the injection zone.
2. Appropriate logs and other tests shall be conducted during the drilling and construction of injection wells. A descriptive report interpreting the results of these logs and tests shall be prepared by a qualified log analyst and submitted to the commission.
3. All injection wells must be equipped with tubing and packer.

History: Effective November 1, 1982; amended effective May 1, 1992.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-08. Plugging and abandoning of injection wells. Prior to abandoning The proper plugging of an injection well, requires the well shall be plugged with cement or other types of plugs, or both, in a manner which will not allow movement of fluids into an underground source of drinking water. The operator shall file a notice of intention to plug (form 4) with the oil and gas division of the industrial commission and shall obtain the chief ~~enforcement officer's~~ director's approval of the plugging method prior to the commencement of plugging operations.

History: Effective November 1, 1982; amended effective May 1, 1992.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-09. Operating requirements. Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to



assure that the pressure in the injection zone during injection does not initiate new fracture or propagate existing fractures in the confining zone adjacent to the freshwater resource. In no case shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water.

Injection between the outermost casing protecting underground sources of drinking water and the well bore Annular injection of fluids is prohibited.

History: Effective November 1, 1982; amended effective May 1, 1992.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-11. Bonding requirements. All injection wells must be bonded as provided in section ~~43-02-03-15~~, except commercial injection wells, must be bonded as provided in section 43-02-03-15. A commercial injection well is one that either receives fluids produced from wells operated by a person other than the principal on the bond or said principal charges an injection fee for disposing of produced fluids. Each commercial injection well must be bonded at the single well bond rate as provided in section 43-02-03-15.

History: Effective November 1, 1982; amended effective May 1, 1992.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-12. Reporting and monitoring requirements.

1. The operator of an injection well shall meter or use an approved method to keep records and shall report monthly to the industrial commission, oil and gas division, the volume and nature, i.e., produced water or makeup water, of the fluid injected, the injection pressure, and such other information as the commission may require. The operator shall retain all records required by the industrial commission for at least three years.
2. Immediately upon the commencement of injection, the operator shall notify the oil and gas division of the injection date.
3. Within ten days after the discontinuance of injection operations, the operator shall notify the oil and gas division of the date of such discontinuance and the reason therefor.
4. The operator of an injection well shall conduct such monitoring and sampling as the commission may require.
5. The operator of an injection well shall report any noncompliance with regulations or permit conditions to the

~~enforcement officer~~ director orally within twenty-four hours followed by a written explanation within five days.

History: Effective November 1, 1982; amended effective May 1, 1992.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-13. Access to records. The industrial commission and the commission's authorized agents shall have access to all injection well records wherever located. All owners, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, operating, or servicing injection wells shall permit the industrial commission, or its authorized agents, to come upon any lease, property, well, or drilling rig operated or controlled by them, complying with ~~all~~ state safety rules, and to inspect the records and operation of wells and to conduct sampling and testing. Any information so obtained shall be public information.

History: Effective November 1, 1982; amended effective May 1, 1992.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-14. Area permits.

1. The commission may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:
  - a. Described and identified by location in permit applications, if they are existing wells;
  - b. Within the same well field, facility site, reservoir, project, or similar unit in the same state;
  - c. Of similar construction;
  - d. Of the same class; and
  - e. Operated by a single owner or operator.
2. Area permits shall specify:
  - a. The area within which underground injections are authorized; and
  - b. The requirements for construction, monitoring, reporting, operation, and ~~abandonment~~ plugging for all wells authorized by the permit.
3. The area permit may authorize the permittee to construct and operate new injection wells within the permit area provided:

- a. The permittee notifies the enforcement officer director when and where the new well has been or will be located.
  - b. The additional well meets the area permit criteria.
  - c. The cumulative effects of drilling and operation of additional injection wells are acceptable to the enforcement officer director.
4. If the enforcement officer director determines that any additional well does not meet the area permit requirements, the enforcement officer director may modify or terminate the permit or take enforcement action.
  5. If the enforcement officer director determines the cumulative effects are unacceptable, the permit may be modified.

History: Effective November 1, 1982; amended effective May 1, 1992.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-06-01. Royalty owner information statement. Whenever payment is made for oil or gas production to an interest owner, whether pursuant to a division order, lease, servitude, or other agreement, all of the following information must be included on the check stub or on an attachment to the form of payment, unless the information is otherwise provided on a regular monthly basis:

1. The lease, property, or well name or any lease, property, or well identification number used to identify the lease, property, or well; provided, that if a lease, property, or well identification number is used the royalty owner must initially be provided with the lease, property, or well name to which the lease, property, or well name refers.
2. The month and year during which sales occurred for which payment is being made.
3. Total corrected volume of oil and gas sold measured in barrels and standard thousand cubic feet (MCF). One hundred percent of the corrected volume of oil, regardless of ownership, which is sold measured in barrels, and one hundred percent of the volume of either wet or dry gas, regardless of ownership, which is sold or removed from the premises for the purpose of sale, or sale of its contents and residue, measured in thousand cubic feet.
4. Price per barrel or thousand cubic feet.
  - a. Oil. Weighted average price per barrel received by the producer for all oil sold during the period for which payment is made. The price would be the net price

received by the producer after purchaser's deductions. The purchaser's deductions are to be explained pursuant to subsection 6.

b. Gas. Weighted average price per thousand cubic feet [28.32 cubic meters] received by the producer for all gas sold during the period for which payment is made. The price would be the net price received by the producer after purchaser's deductions. The purchaser's deductions are to be explained pursuant to subsection 6.

5. Total amount of state severance and other production taxes.

6. ~~Windfall profit tax paid on owner's interest.~~

~~7.~~ Any other deductions or adjustments. Those not explained on the statement or in a separate mailing must be explained to the royalty owner upon inquiry to the disburser.

~~8.~~ 7. Net value of total sales after deductions.

~~9.~~ 8. Owner's interest in sales from the lease, property, or well expressed as a decimal.

~~10.~~ 9. Owner's share of the total value of sales prior to any tax deductions.

~~11.~~ 10. Owner's share of sales value less deductions.

~~12.~~ 11. An address where additional information may be obtained and any questions answered. If information is requested by certified mail, the answer must be mailed by certified mail within thirty days of receipt of the request.

History: Effective November 1, 1983; amended effective April 1, 1984; November 1, 1987; May 1, 1992.

General Authority: NDCC 38-08-06.3

Law Implemented: NDCC 38-08-06.3

43-02-06-02. Annual windfall profits tax information statement.

~~1.~~ Any person making payment to a royalty owner for the sale of oil must provide the royalty owner with an annual statement containing the following information:

~~a.~~ Removal date - month or quarter and year.

~~b.~~ Tier level.

~~c.~~ Tax rate.



- d. ~~The quantity of oil on which windfall profit tax has been paid.~~
  - e. ~~Removal value.~~
  - f. ~~Adjusted base price.~~
  - g. ~~Severance tax adjustment.~~
  - h. ~~Windfall profit.~~
  - i. ~~Windfall profit tax liability.~~
  - j. ~~Windfall profit tax withheld.~~
2. ~~The information provided in the annual statement must be broken down into monthly or quarterly totals on a lease, property, or per well basis (except for unit production) and must be mailed to the royalty owner by March thirty-first immediately following the year of the sale.~~
3. ~~The windfall profits tax information required by this section shall be furnished for all oil sales after January 1, 1983.~~  
Repealed effective May 1, 1992.

History: ~~Effective November 1, 1983.~~

General Authority: ~~NBCE 38-08-06.3~~

Law Implemented: ~~NBCE 38-08-06.3~~

43-02-06-03. Annual stored gas information statement. Any person required to submit information, as provided by this chapter, to a royalty owner shall, if gas either wholly or partially owned by a royalty owner is being placed into storage off the leased premises, provide the royalty owner with an annual statement containing the following information:

1. Total corrected volume of gas measured in standard thousand cubic feet (MCF) in storage at the beginning of the calendar year;
2. Total corrected volume of gas measured in thousand cubic feet added each month to storage during the calendar year;
3. Total corrected volume of gas measured in thousand cubic feet removed each month from storage during the calendar year; and
4. Total corrected volume of gas measured in thousand cubic feet in storage at the end of the calendar year.

The information required by this section must be supplied for all royalty owner gas placed into storage after December 31, 1986, and must



be mailed to the royalty owner annually no later than March thirty-first immediately following each calendar year covered by the statement.

History: Effective November 1, 1987; May 1, 1992.

General Authority: NDCC 38-08-06.3

Law Implemented: NDCC 38-08-06.3

43-02-08-02. Application for stripper well property determination. Any operator desiring to classify a property as a stripper well property for purposes of exempting production from the imposition of the oil extraction tax as provided under North Dakota Century Code chapter 57-51.1 shall file an application for stripper well property determination with the ~~enforcement officer~~ director and obtain a determination certifying the property as a stripper well property. The applicant has the burden of establishing entitlement to stripper well property status and shall submit all data necessary for a determination by the ~~enforcement officer~~ director.

The application must include, but is not limited to, the following:

1. A fee in an amount to be set by the commission.
2. The name and address of the applicant and the name and address of the person operating the well, if different.
3. The legal description of the property for which a determination is requested.
4. The well name and number and legal description of each oil-producing well on the property during the qualifying period and at the time of application.
5. The depth of all perforations (measured in feet from ground level) from each producing well on the property during the qualifying period which produces from the same pool.
6. Designation of the property which the applicant requests to be certified as a stripper well property. Such designation must be accompanied by sufficient documentation for the ~~enforcement officer~~ director to determine (as set forth in section 43-02-08-02.1) that the property the applicant desires to be certified as a stripper well property constitutes a property as specified in subsection 3 of North Dakota Century Code section 57-51.1-01.
7. The monthly production of each oil-producing well on the property during the qualifying period.
8. An affidavit stating that all working interest owners of the property, and all purchasers of the crude oil produced from

the property have been notified of the application by certified or registered mail.

If the application does not contain sufficient information to make a determination, the ~~enforcement officer~~ director may require the applicant to submit additional information.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-02.1. Property determination. For purposes of this chapter, property will be determined by reference to the geographical boundaries of the right to produce crude oil as such right existed on January 1, 1972, provided such right was in production in commercial quantities on that date. If such right was not in production in commercial quantities on January 1, 1972, the determination of property will be made by reference to the geographical boundaries of the right to produce crude oil when crude oil is first produced thereafter in commercial quantities. For purposes of determining what constitutes a property, the ~~enforcement officer~~ director shall recognize as separate properties the following:

1. A unit, where the unit is the aggregation of separate interests into a single right to produce. For the purposes of property determination, a unit means the total geographical area incorporated in a unitization agreement approved by order of the commission. In cases where a property has been unitized, portions of the property outside the unit boundary are separate properties.
2. Separate and distinct reservoirs, as defined by orders of the commission.
3. Noncontiguous tracts. (Tracts abutting solely at a corner are considered noncontiguous tracts.)
4. A single well, or any portion of a property which has been developed and produced separately. Any well or portion of a property previously qualified as a stripper well property may not be redesignated to be included in another property.

History: Effective September 1, 1987; amended effective May 1, 1992.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-03. ~~Enforcement officer~~ Director shall determine stripper well property status.

1. Upon receipt of an application for stripper well property determination, the ~~enforcement officer~~ director shall review the application, information, or comments submitted by any interested person and all relevant information contained in the books, files, and records of the commission.
2. Stripper well property status will be determined on the basis of the qualified maximum total production of oil from the property. In order to qualify production from a property as maximum total production, each oil-producing well on the property must have been maintained at the maximum efficient rate of production throughout the twelve-month qualifying period. A property meets the requirements of a stripper well property if the qualified maximum total production of oil from the property excluding condensate did not exceed the following:
  - a. Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
  - b. Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day; or
  - c. Production from a well with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of twenty barrels per day.
3. Within thirty days of the receipt of a complete application for stripper well property status, or a reasonable time thereafter, the ~~enforcement officer~~ director shall either grant or deny the application.
4. If an application for stripper well property status is denied, the ~~enforcement officer~~ director shall in writing enter a written determination denying the application and specify the basis for the denial. If an application for stripper well property status is granted, the ~~enforcement officer~~ director shall in writing enter a written determination granting the application. A copy of the determination either granting or denying the application must be forwarded by the ~~enforcement officer~~ director by mail to the applicant and all other persons submitting written comments. It is the obligation of the applicant to notify and advise the state tax commissioner, all other operators in the property, and the purchaser of the crude oil of the determination of the ~~enforcement officer~~ director.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-04. Applicant adversely affected may submit amended application - Procedure. Any applicant adversely affected by a determination of the ~~enforcement officer~~ director made under sections 43-02-08-02 through 43-02-08-03 may within thirty days after the entry of such a determination submit an amended application. If an amended application is submitted, the ~~enforcement officer~~ director shall issue a determination of stripper well property status within thirty days of the receipt of the amended application or a reasonable time thereafter.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-05. Person adversely affected may petition the commission - Procedure. Any person adversely affected by a determination of the ~~enforcement officer~~ director of either an application or an amended application for stripper well property status made under sections 43-02-08-02 through 43-02-08-03 may within thirty days after the entry of such a determination petition the commission for a hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and ~~North Dakota Administrative Code~~ chapter 43-02-03.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-07. Application to certify a qualifying secondary recovery project. Any unit operator desiring to certify a secondary recovery project as a "qualifying secondary recovery project" for purposes of eligibility for a reduction in tax as provided under North Dakota Century Code chapter ~~57-51.1~~ shall submit to the commission an application for certification of a qualifying secondary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project qualifies as a "qualifying secondary recovery project". Repealed effective May 1, 1992.

History: Effective ~~September 1, 1987.~~

General Authority: ~~NDCC 38-08-04(5)~~

Law Implemented: ~~NDCC 38-08-04(4), 57-51.1-01~~

43-02-08-08. Commission certification of secondary recovery project. Upon the filing of an application for certification of a qualifying secondary recovery project, the commission shall promptly fix a date for hearing in accordance with the provisions of North Dakota



Century Code chapter 38-08 and North Dakota Administrative Code chapter 43-02-03. In determining whether a secondary recovery project shall be certified as a "qualifying secondary recovery project", the commission shall determine:

1. Whether the secondary recovery project was unitized after April 27, 1987;
2. The amount of crude oil which would have been recovered from the area of the unit source of supply if the secondary recovery project had not been created; and
3. Whether the secondary recovery project has achieved for six consecutive months an average production level of at least twenty-five percent above the amount of production which would have been recovered from the area of the unit source of supply (as determined in subsection 2) if the secondary recovery project had not been created. Repealed effective May 1, 1992.

History: Effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-09. Application to certify a qualifying tertiary recovery project. Any unit operator desiring to certify a tertiary recovery project as a "qualifying tertiary recovery project" for purposes of eligibility for a reduction in tax as provided under North Dakota Century Code chapter 57-51.1 shall submit to the commission an application for certification of a qualifying tertiary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project qualifies as a "qualifying tertiary recovery project". Repealed effective May 1, 1992.

History: Effective September 1, 1987.

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-10. Commission certification of tertiary recovery project. Upon the filing of an application for certification of a qualifying tertiary recovery project, the commission shall promptly fix a date for hearing in accordance with the provisions of North Dakota Century Code chapter 38-08 and North Dakota Administrative Code chapter 43-02-03. In determining whether a tertiary recovery project shall be certified as a "qualifying tertiary recovery project", the commission shall determine:

1. Whether the tertiary recovery project meets the requirements of the tertiary recovery methods specified in subsection 6 of North Dakota Century Code section 57-51.1-01;



- ~~2.~~ The amount of crude oil which would have been recovered from the area of the unit source of supply if the tertiary recovery project had not been created; and
- ~~3.~~ Whether the tertiary recovery project has achieved for at least one month an average production level of at least fifteen percent above the amount of production which would have been recovered from the area of the unit source of supply (as determined in subsection 2) if the tertiary recovery project had not been created. Repealed effective May 1, 1992.

History: Effective September 1, 1987.

General Authority: ~~NBCE 38-08-04(5)~~

Law Implemented: ~~NBCE 38-08-04(4); 57-51.1-01~~

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 in the latest six consecutive calendar months of production prior to the filing of the notice of intention to perform a workover project during which the well produced an average of at least fifteen days per month.
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.~~ 4. "Reentry" means the entering of a well that has been plugged.
- ~~6.~~ 5. "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.~~ 6. "Workover project" means the continuous employment of a workover rig for workovers, recompletions, or reentries.
- ~~8.~~ 7. "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 produced an average of less than fifteen days per month because such method of operation was the most efficient and allowed for approximately the same amount of production as would have resulted had the well produced an average of fifteen or more days per month.

History: Effective May 1, 1990; amended effective May 1, 1992.

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 director. 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 director 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~~ director 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; amended effective May 1, 1992.

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~~ director 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~~ director shall either grant or deny the application.
3. If an application for workover project determination is denied, the ~~enforcement officer~~ director shall enter, ~~in writing,~~ a written determination denying the application and specifying the basis for denial. If an application is granted, the ~~enforcement officer~~ director shall enter, ~~in writing,~~ a written determination granting the application.
4. A copy of the determination either granting or denying the application must be forwarded by the ~~enforcement officer~~ director 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~~ director.

History: Effective May 1, 1990; amended effective May 1, 1992.

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~~ director determines a well is entitled to a tax exemption under this chapter, the ~~enforcement officer~~ director 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; amended effective May 1, 1992.

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~~ director 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; amended effective May 1, 1992.

General Authority: NDCC 57-51.1-03

Law Implemented: NDCC 57-51.1-03

STAFF COMMENT: Chapter 43-02-10 contains all new material but is not underscored so as to improve readability.

CHAPTER 43-02-10  
CERTIFICATION OF SECONDARY AND TERTIARY RECOVERY PROJECTS -  
DETERMINATION OF INCREMENTAL PRODUCTION

Section	
43-02-10-01	Definitions
43-02-10-02	Application to Certify a Qualifying Secondary Recovery Project
43-02-10-03	Commission Certification of Secondary Recovery Project
43-02-10-04	Application to Certify a Qualifying Tertiary Recovery Project
43-02-10-05	Commission Certification of Tertiary Recovery Project
43-02-10-06	Incremental Production Determination for a Secondary Recovery Project
43-02-10-07	Incremental Production Determination for a Tertiary Recovery Project

43-02-10-01. **Definitions.** The terms of this chapter have the same meaning as in North Dakota Century Code chapters 38-08 and 57-51.1 except:

1. "New secondary recovery project" means a secondary recovery project which results in incremental production.
2. "Normal production" means production from a unit obtained in the same manner and from the same wells which produce approximately the same amount of time.

History: Effective May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04

43-02-10-02. **Application to certify a qualifying secondary recovery project.** Any unit operator desiring to certify a secondary recovery project as a "qualifying secondary recovery project" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the commission an application for certification of a qualifying secondary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project is a qualifying secondary recovery project, and is entitled to the tax reduction and tax exemption



provided in North Dakota Century Code sections 57-51.1-02 and 57-51.1-03 respectively.

History: Effective May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04, 57-51.1-01

43-02-10-03. Commission certification of secondary recovery project. Upon the filing of an application for certification of a qualifying secondary recovery project, the commission shall promptly set a date for hearing. In determining whether a secondary recovery project shall be certified as a "qualifying secondary recovery project", the commission shall determine:

1. The amount of crude oil which would have been recovered from the unit source of supply if the secondary recovery project had not been commenced;
2. Whether, for the purposes of a tax reduction, the secondary recovery project has achieved for six consecutive months an average production level of at least twenty-five percent above the amount of production which would have been recovered from the unit source of supply (as determined in subsection 1) if the secondary recovery project had not been commenced; and
3. Whether, for the purposes of a tax exemption and subsequent thereto the tax reduction, there has been incremental production.

History: Effective May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04, 57-51.1-01

43-02-10-04. Application to certify a qualifying tertiary recovery project. Any unit operator desiring to certify a tertiary recovery project as a "qualifying tertiary recovery project" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the commission an application for certification of a qualifying tertiary recovery project. The unit operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether the project is a qualifying tertiary recovery project, and is entitled to the tax reduction and tax exemption provided in North Dakota Century Code sections 57-51.1-02 and 57-51.1-03 respectively.

History: Effective May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04, 57-51.1-01

43-02-10-05. Commission certification of tertiary recovery project. Upon the filing of an application for certification of a qualifying tertiary recovery project, the commission shall promptly set a date for hearing. In determining whether a tertiary recovery project shall be certified as a "qualifying tertiary recovery project", the commission shall determine:

1. Whether the tertiary recovery project meets the requirements of the tertiary recovery methods specified in subsection 6 of North Dakota Century Code section 57-51.1-01;
2. The amount of crude oil which would have been recovered from the unit source of supply if the tertiary recovery project had not been commenced; and
3. Whether the tertiary recovery project has achieved for at least one month an average production level of at least fifteen percent above the amount of production which would have been recovered from the unit source of supply (as determined in subsection 2) if the tertiary recovery project had not been commenced; and
4. Whether, for the purposes of the tax exemption and subsequent thereto the tax reduction, there has been incremental production.

The commission will, upon application or its own motion, have a hearing to determine whether the project operator continues to operate the unit as a qualifying tertiary recovery project.

History: Effective May 1, 1992.  
General Authority: NDCC 38-08-04  
Law Implemented: NDCC 38-08-04, 57-51.1-01

43-02-10-06. Incremental production determination for a secondary recovery project.

1. a. In a unit where there has not been a secondary recovery project, the commission will establish a primary production decline curve. In such instance, incremental production is the production above the established primary production decline curve which production is a result of the secondary recovery project.
- b. The total amount of primary production from the unit will be determined by the commission through the use of a computer generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through

the last month of oil production prior to the month in which secondary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate primary production.

- c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to develop the primary decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production and production below the decline curve is primary production. The total projected primary production, on a monthly basis in numerical form, is derived from the projected primary production decline curve. A copy of the projected monthly primary production, in numerical form, will be furnished to the unit operator and the tax commissioner.
2. In a unit which commences a new secondary recovery project where a secondary recovery project was in existence prior to July 1, 1991, and the commission cannot establish an accurate production decline curve, incremental production will be determined pursuant to paragraph 2 of subdivision c of subsection 5 of North Dakota Century Code section 57-51.1-03.
  3.
    - a. In a unit which commences a new secondary recovery project where a secondary recovery project was in existence before July 1, 1991, and where the commission can establish an accurate production decline curve, incremental production is the production above the established production decline curve which production is a result of the new secondary recovery project.
    - b. The total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced will be determined by the commission through the use of a computer generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which the new secondary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate production that would have been produced if the new secondary recovery project had not been commenced.

- c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to develop the decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production and production below the decline curve is production which would have occurred in the absence of the new secondary recovery project. The total projected production below the curve, on a monthly basis in numerical form, is derived from the projected production decline curve. A copy of the projected monthly production below the curve, in numerical form, will be furnished to the unit operator and the tax commissioner.
4. The commission will hold a hearing to establish a decline curve and a projection of the curve from which incremental production can be determined. At the hearing the project operator of a secondary recovery project or a new secondary recovery project must introduce evidence regarding the work proposed or accomplished which will result in incremental production, and evidence showing that the project is a qualifying project. Application for the hearing may, at the discretion of the project operator, be made prior or subsequent to the commencement of a secondary recovery project or commencement of a new secondary recovery project.

History: Effective May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-01

43-02-10-07. Incremental production determination for a tertiary recovery project.

1. a. In a unit where there has not been a secondary recovery project and a tertiary project is commenced, the commission will establish a primary production decline curve. In such instance, incremental production is the production above the established primary production decline curve which production is a result of the tertiary recovery project.
- b. The total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced will be determined by the commission through the use of a computer generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which the tertiary recovery project operations commence.

However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate primary production.

- c. The production decline curve established in subdivision b of this subsection is projected from the end of the last month in which production was used to develop the primary decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production and production below the decline curve is primary production. The total projected primary production, on a monthly basis in numerical form, is derived from the projected primary production decline curve. A copy of the projected monthly primary production, in numerical form, will be furnished to the unit operator and the tax commissioner.
2. In a unit which commences a tertiary recovery project where there is or has been a secondary recovery project and the commission cannot establish an accurate production decline curve, incremental production will be determined pursuant to paragraph 5 of subdivision c of subsection 5 of North Dakota Century Code section 57-51.1-03.
  3.
    - a. In a unit which commences a tertiary recovery project where there is or has been a secondary recovery project and where the commission can establish an accurate production decline curve, incremental production is the production above the established production decline curve which production is a result of the tertiary recovery project.
    - b. The total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced will be determined by the commission through the use of a computer generated production decline curve developed by software used by the commission at the time of certification. The decline curve will be a production versus time plot. The oil production and the time used to develop the curve will be that production occurring and period of time from the latest peak in production through the last month of oil production prior to the month in which the tertiary recovery project operations commence. However, the director shall have discretionary authority to select a different period of time to establish the decline curve if deemed necessary to obtain a more accurate estimate of the ultimate production that would have been produced if the tertiary recovery project had not been commenced.
    - c. The production decline curve established in subdivision b of this subsection is projected from the end of the last



month in which production was used to develop the decline curve to a producing rate of one barrel of oil per well per day. All production above the projected decline curve is incremental production and production below the decline curve is production which would have occurred in the absence of the tertiary recovery project. The total projected production below the curve, on a monthly basis in numerical form, is derived from the projected production decline curve. A copy of the projected monthly production below the curve, in numerical form, will be furnished to the unit operator and the tax commissioner.

4. The commission will hold a hearing to establish a decline curve and a projection of the curve from which incremental production can be determined. At the hearing the project operator of a tertiary recovery project must introduce evidence regarding the work proposed or accomplished which will result in incremental production, and evidence showing that the project is a qualifying project. Application for the hearing may, at the discretion of the project operator, be made prior or subsequent to the commencement of a tertiary recovery project.

History: Effective May 1, 1992.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 57-51.1-01

TITLE 45  
Insurance, Commissioner of



APRIL 1992

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

1. If not in excess of the standards outlined below, proposed premium rates to debtors or creditors for credit insurance provided under a group term policy, or credit insurance provided under individual term policies, except where such individual policies are issued as isolated transactions not related to a plan of insuring the debtors of a creditor, will, prima facie, be deemed to be reasonable in relation to benefits provided.
2. The standards for premium rates for credit life insurance are as follows:
  - a. Such standards specified in subdivisions c, d, and e are applicable to a plan of death benefits only, without additional benefits based upon a contingency other than death, without exclusions other than an exclusion for suicide and with age limitations not less favorable to the insured debtor than either of the following:
    - (1) Coverage being available only to debtors who have attained the age of sixty-five years or less at the times the respective indebtednesses are incurred.
    - (2) Coverage being available only to debtors who would attain the age of sixty-six years or less at the maturity dates of the respective transactions.
  - b. Premium rates, for other benefit plans, or for exclusions, limitations, or specifications other than outlined in subdivision a, or for indebtedness repayable other than as indicated in subdivision c, will be actuarially consistent with the premium rates given in subdivisions c, d, and e.

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

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

~~Sixty cents and beginning January 1, 1989, fifty~~ Forty cents

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

- d. If premiums are paid monthly on outstanding insurance balances, such standard will be ~~ninety-four cents and beginning January 1, 1989, seventy-eight~~ sixty-two cents per month per one thousand dollars of insurance in force.
- e. If credit life insurance is provided on a level basis, such premium standard will be ~~one dollar twelve cents and beginning January 1, 1989, ninety-three~~ seventy-four cents per year per one hundred dollars of insurance in force.
- f. For joint credit life coverage, a prima facie rate equal to 1.7 times the rate which would otherwise apply to that type of coverage.
- g. As an alternative to the foregoing provisions of this subsection, where age data applicable to the insured persons are available, an insurer may determine, under a rating plan approved by the commissioner, premium rates that are based upon such age data.
3. The standards for premium rates, for credit accident and health insurance, are as follows:
- a. Such standards specified in subdivision c are applicable to any policy which:
- (1) Contains an exclusion for preexisting conditions that is not less favorable to the insured debtor than one which excludes or denies a claim for disability resulting from preexisting illness, disease, or physical condition for such debtor received medical advice, consultation, or treatment during the six-month period immediately preceding the effective date of such debtor's coverage, where such preexisting



condition would ordinarily be expected to affect materially such debtor's health during the period of coverage; provided, however, that after such coverage will have been in force for six months (twelve months, for a covered loan duration if more than three years), such preexisting exclusion clause will not operate to deny coverage for any disability commencing thereafter;

- (2) Contains provisions which are not more restrictive to the insured debtor than ones which limit or exclude coverage for disabilities resulting from pregnancy, intentionally self-inflicted injuries, war, or military service; and
  - (3) Contains a provision which is not less favorable to the insured debtor than one which limits the availability of coverage to debtors who are aged sixty-five years or less at the times the respective indebtednesses are incurred, or than one which limits the availability of coverage to debtors who would attain the age of sixty-six years or less at the maturity dates of the respective transactions.
- b. Premium rates, for benefit plans other than as specified in subdivision c, or for exclusions, limitations, or specifications other than as outlined in subdivision a, or for indebtedness repayable other than as indicated in subdivision c, will be actuarially consistent with the premium rates given in subdivision c.
- c. If premiums are paid or charged in a single sum, for the entire duration of the indebtedness, such standards will be as specified below:

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

BENEFITS PAYABLE

Number of Equal Monthly Installments	After Fourteenth Day of Disability, Retroactive To First Day of Disability	After Fourteenth Day of Disability	After Thirtieth Day of Disability, Retroactive To First Day of Disability	After Thirtieth Day of Disability
	6	\$1.31	\$ .83	\$1.05
12	1.88	1.30	1.51	.94
24	2.54	1.85	2.03	1.39
36	3.01	2.23	2.38	1.70
48	3.40	2.56	2.65	1.94
60	3.74	2.83	2.89	2.16
72	4.00	3.06	3.06	2.32
84	4.17	3.24	3.18	2.43
96	4.30	3.38	3.27	2.51
108	4.40	3.50	3.34	2.58
120	4.47	3.60	3.40	2.62

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

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

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

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

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

4. Deviations from the prima facie standard rates provided in subsections 2 and 3 may be allowed for an insurer which demonstrates a loss ratio of sixty percent or more based on prima facie rates. Nothing herein precludes an insurer from filing, for the consideration of the commissioner, premium rates which are higher than the standards outlined in subsections 2 and 3, provided such insurer demonstrates, to the satisfaction of the commissioner, that the filing conforms with the purpose and intent of the premium standards outlined herein. In ruling upon such filing, the commissioner will give consideration to the following factors: available

mortality or morbidity experience data, pertaining to the applicable class or classes of debtors of the creditor (including experience on any subsidiary or affiliate of such creditor); available age data; reasonable rates of expense; company loss ratio; and any other relevant factors. However, the commissioner will only allow an insurer with a loss ratio of more than sixty percent to increase its rate to higher than the prima facie standards outlined in subsections 2 and 3 under extraordinary situations as demonstrated by the company and after consideration of the factors described in this subsection.

5. The commissioner shall maintain year-by-year surveillance over the developing overall loss ratio experienced by each insurer providing credit life insurance or credit accident and health insurance in North Dakota. This loss ratio means the ratio of incurred claims to revenue premiums.

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

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

History: Amended effective March 1, 1988; April 1, 1992.

General Authority: NDCC 26.1-30-19, 26.1-37-15

Law Implemented: NDCC 26.1-30-19(2), 26.1-30-19(3), 26.1-37

STAFF COMMENT: Chapter 45-10-02 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 [Superseded]
45-10-02	General Provisions

CHAPTER 45-10-01  
GENERAL PROVISIONS

[Superseded by Chapter 45-10-02]

CHAPTER 45-10-02  
GENERAL PROVISIONS

Section	
45-10-02-01	Definitions
45-10-02-02	Tank Registration
45-10-02-03	Registration Fee
45-10-02-04	Notification of Release Procedures
45-10-02-05	Procedures for Investigation of Claims
45-10-02-06	Payment
45-10-02-07	Third-Party Claims
45-10-02-08	Advisory Board
45-10-02-09	Report to Legislative Assembly and Governor

45-10-02-01. Definitions. For the purposes of this chapter, the following definitions apply in addition to the definitions set forth in section 2 of chapter 299 of the 1991 Session Laws:

1. "Antifreeze" is not a petroleum product.
2. "Farm tank" means a tank located on a tract of land devoted to the production of crops or for raising animals and associated residences and improvements. A farm tank must be located on the farm property.
3. "Portable tank" means any storage tank that is not stationary or affixed including, but not limited to, tanks which are on skids.
4. "Residential tank" means a tank located on property used primarily for dwelling purposes.
5. "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials.
6. Storage tanks used for collecting crude oil are considered flowthrough process tanks and are excluded from coverage.

History: Effective November 25, 1991.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299

45-10-02-02. Tank registration. On an annual basis, the administrator will mail to all prior fund registrants and any other known petroleum tank owners and operators in North Dakota a registration letter and billing notice. The letter will explain the function of the fund and the requirement that the tank owner or operator receive prior registration of all tanks owned or operated in order to be eligible for payment in the event of a petroleum release. In the event of a petroleum release, no payment 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 November 25, 1991.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, § 17

45-10-02-03. Registration fee.

1. An annual registration fee of seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank is due and payable on July 1, 1991, and on July first of each successive year thereafter. The period of registration must run from July first to June thirtieth to coincide with the fiscal year of North Dakota.
2. No reregistration or fee modification will be made during any registration year when an owner or operator removes a tank or replaces an underground tank with an aboveground tank within a registration year. The fee correction will be made at the renewal date. However, a prorated registration fee is required for the installation of an additional tank within any registration year.
3. In the event the legislative assembly may make any alterations or modifications of the registration fee, the administrator shall prorate the annual registration fee accordingly.

History: Effective November 25, 1991.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, § 17

45-10-02-04. Notification of release procedures. Once the administrator has received from the department written notification of a release, the administrator shall undertake or cause to be undertaken the following procedures as applicable:

1. Enter the release information into the claim register.
2. Verify that the tank owner or operator has registered the tank 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. Upon receipt of the completed application, the administrator shall investigate the release through the use of one of the following:
  - a. A fund employee;
  - b. Employ an independent adjuster; or
  - c. Coordinate with an insurance company.
5. Review and summarize all final claims reports with the advisory board.
6. Reimburse the owner or operator or make payment to the owner's or operator's assigned representative.

History: Effective November 25, 1991.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, §§ 10, 19

#### 45-10-02-05. Procedures for investigation of claims.

1. Appointment of claims representative. If the administrator appoints a claims representative to investigate the release, the claims representative's functions are as follows:
  - a. Ensure the fairness of cleanup costs, making sure they are necessary, reasonable, and not excessive.
  - b. Obtain the adjuster's first report within twenty days of the adjuster's receipt of the claim.
  - c. The adjuster's subsequent progress reports must be submitted to the fund at least every thirty days.
  - d. Submit all required documents to the fund.
  - e. 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 claims representative 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 cleanup costs.
  - e. Complete any and all other tasks or duties specified by the administrator.

History: Effective November 25, 1991.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, §§ 18, 20, 23

#### 45-10-02-06. Payment.

1. No payment may be made from the fund unless the subject tank has been properly registered and the registration fee paid prior to the discovery of the release.
2. No payment will be made from the fund unless a completed application form has been received by the administrator. The application must contain at least 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.

3. Payment must be made for eligible costs as determined by the administrator. The fund must make payment to an eligible owner or operator whose tanks were properly registered prior to discovery of the release for ninety percent of the eligible costs between five thousand dollars and one hundred fifty-five thousand dollars for corrective action including the investigation, and one hundred percent of the costs of corrective action between one hundred fifty-five thousand dollars and one million dollars per occurrence and two million dollars in the annual aggregate.
4. Eligible costs for a corrective action include, but are not limited to, 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 and necessary to remedy cleanup of the release and satisfy liability to any third party.
  - h. Consultant fees if authorized by the North Dakota department of health and consolidated laboratories or other federal or state agency approving the cleanup procedures.
5. The following will not be considered eligible costs under this regulation:
  - a. The cost of replacement, repair, and maintenance of affected tanks and associated piping.
  - b. Pumping out of any product, including water, from any tanks which need to be removed.
  - c. The cost of upgrading existing affected tanks and associated piping.
  - d. The loss of income, profits, or petroleum product.
  - e. Decreased property value.

- f. Bodily injuries or property damages except for injuries or damages suffered by third parties.
  - g. Attorney's fees.
  - h. Costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this regulation.
  - i. The costs of making improvements to the facility beyond those that are required for corrective action.
  - j. Any cleanup costs resulting from negligence or misconduct on the part of the owner or operator.
  - k. Costs in excess of those considered reasonable by the fund.
  - l. Fines or penalties imposed by order of federal, state, or local government.
  - m. Finance charges, interest charges, or late payment charges.
6. In making the determination of the amount and type of costs eligible for payment 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.
7. At the discretion of the administrator and after review by the advisory board, the fund may provide partial payments prior to the final determination of the amount of the loss, if it is determined the cleanup is proceeding according to the proposed work plan for the site assessment as required by the department. The payment may be made to the owner or operator or the owner's or operator's assigned representative if the appropriate assignment form, as approved by the fund, is completed and submitted to the fund administrator with appropriate invoices establishing time and materials expended by the assignee.
8. All claims for payment are subject to the availability of funds in the petroleum tank release compensation fund.
9. Subrogation. Prior to payment 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.

10. No payment will be made until the owner or operator has submitted complete excavation or consultant worksheets along with legible copies of invoices, providing a description of:
  - a. Any work performed.
  - b. Who performed the work.
  - c. Where the work was performed.
  - d. The dates the work was performed.
  - e. The unit cost.
  - f. The total amount.
11. The owner or operator must submit, prior to any payment, evidence that the amounts shown on the invoices for which the payment is requested were either paid in full by the owner or operator or, if the owner or operator has assigned the right to receive payment from the fund, that a contractor hired by the owner or operator has expended time and materials for which payment must be made. The evidence must be accompanied by either:
  - a. Business receipts indicating payments received;
  - b. Canceled checks;
  - c. The certification of a certified public accountant that the expenses for which reimbursement is requested have been paid in full; or
  - d. Unpaid invoices from a contractor for time and materials expended broken out by unit costs.
12. Prior to payment, the fund must be satisfied that the corrective action taken has met all state, federal, and local laws or regulations concerning such a cleanup and that the corrective action has adequately addressed the release in terms of public health, welfare, and the environment.

History: Effective November 25, 1991.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, §§ 18, 20, 23, 24



45-10-02-07. Third-party damages. No reimbursement may be made for damage to employees as defined by the North Dakota Workers' Compensation Act or agents of the owner or operator.

History: Effective November 25, 1991.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, §§ 26, 27

45-10-02-08. Advisory board. The administrator shall keep the board apprised of the fund's general operations. Prior to making any payment, 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 November 25, 1991.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, § 3

45-10-02-09. Report to legislative assembly and governor. This report, as required by section 29 of chapter 299 of the 1991 North Dakota 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 five thousand dollars.
4. Total number of releases investigated by the fund.
5. Total amount paid out for releases and the average payout per release.
6. Brief summary of the fund's operating expenses.
7. Recommended changes, if any, to 1991 House Bill No. 1439.
8. Recommendation to continue or terminate the program.

History: Effective November 25, 1991.

General Authority: NDCC 28-32-02; S.L. 1991, ch. 299, § 5

Law Implemented: S.L. 1991, ch. 299, § 29



TITLE 48  
Board of Animal Health



MAY 1992

48-09-01-01. Feedlot registration. For the purpose of complying with North Dakota Century Code section 36-01-30 regulating brand inspection of registered feedlots:

1. Any person who operates a dry lot cattlefeeding operation within the confines of permanently fenced lots may make application to the chief brand inspector of the North Dakota stockmen's association for a registered feedlot number. After the association has received application and a fee, an agent of the association shall, within thirty days, make investigation to determine that the following requirements are satisfied:
  - a. Operator's lots must be of permanently fenced dry lot status.
  - b. Operator must commonly practice feeding cattle to finish for slaughter.
  - c. Commercial feedlots, which custom feed cattle for other persons, and do not have ownership of the cattle, are not eligible for registration.

However, producers wishing to have their cattle fed at a commercial lot may apply for a registered feedlot permit individually and the operators of a commercial lot will be responsible for submitting all the necessary paperwork. If satisfactory the association may issue such registration number valid for ten years unless rescinded for cause.

2. All cattle placed in a registered feedlot shall be accompanied by a brand inspection certificate. Such certificate may be a market clearance, a local brand inspection certificate, or a recognized brand inspection certificate from another state.



Cattle purchased or acquired by a registered feedlot operator from a North Dakota producer shall be inspected before being mixed with other cattle and the producer shall pay inspection costs. Cattle raised by a registered feedlot operator and placed in the operator's own feedlot shall be inspected at the time they are placed in the feedlot and the regular inspection fee shall be paid by the operator. Cattle to be placed in a registered feedlot which come from outside North Dakota, but which are not accompanied by a brand inspection certificate, shall be inspected without charge before being mixed with other cattle.

3. The operator of a registered feedlot shall be required to keep certain cattle inventory records. A form for this purpose shall be prescribed by the chief brand inspector, such form to show number of cattle in the lot, number sold, date and place where cattle were sold, number of cattle remaining in lot, number of replacement cattle placed in lot, and such other information as may be necessary, including death losses. Cattle shipped from a registered feedlot directly to market shall not be subject to brand inspection or payment of inspection fees at the market but must be shipped on a permit form as prescribed by the chief brand inspector. This form shall be made in triplicate; one copy shall be delivered to the brand inspector at the market along with shipment; one copy shall be sent to the chief brand inspector along with the fees not later than ten days after the end of each quarter (quarters being March, June, September, December) for those cattle shipped during the previous three months; and one copy shall be retained by the operator. In the event the above permit form fails to accompany shipment of cattle to market, cattle shall be subject to inspection and regular fees shall be charged for the service. The operator of a registered feedlot shall pay an annual assessment of twenty dollars plus ~~three~~ ten cents per head on each head shipped on the above permit form. Operators will be billed the twenty dollar portion of the annual assessment by the chief brand inspector in December for the coming year's annual assessment.
4. Cattle sold from a registered feedlot, but which are not sold for slaughter, must be inspected and the seller shall bear the cost of inspection at the regular fee.
5. Registered feedlots shall be subject to inspection at any reasonable time at the discretion of the chief brand inspector, and the operator shall show cattle inventory records and inspection certificates to cover all cattle in the operator's feedlot.
6. The chief brand inspector is authorized to revoke or suspend registration.

History: Amended effective June 1, 1983; November 1, 1989; May 1, 1992.

General Authority: NDCC 36-01-30  
Law Implemented: NDCC 36-01-30



TITLE 54  
Nursing, Board of





MARCH 1992

54-02-01-06. Examination fees. The board shall set the fee for licensure by examination. The fee for each applicant desiring to take the ~~registered nurse~~ licensing examination shall be ~~sixty five~~ seventy-five dollars. ~~The fee for each applicant desiring to take the practical nurse licensing examination shall be forty dollars.~~ The fees ~~fee~~ will not be refunded after the deadline date for filing the application. The candidate shall be responsible for any payment of fees charged by the national council of state boards of nursing for use of the national council licensure examination.

History: Amended effective November 1, 1979; March 1, 1986; March 1, 1992.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(3)

54-02-05-07. Encumbered license. A license that is encumbered by specific practice restrictions shall be issued with the following statement: "This license is encumbered. Please contact the board office." If a licensee has both a registered nurse license and an advanced registered nurse license, the encumbrance must be on both licenses.

History: Effective March 1, 1986; amended effective March 1, 1992.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-06-01. Application and fee for license by endorsement. Applicants for license by endorsement must submit a completed notarized application and pay the endorsement fee of ~~sixty five~~ seventy-five dollars ~~for registered nurses or forty dollars for licensed practical nurses.~~ Applicants for licensure by endorsement must have completed a state-approved nursing education program which meets or exceeds those

requirements outlined in article 54-03 or 54-03.1 according to the date the applicant enrolled in the nursing education program.

History: Amended effective November 1, 1979; March 1, 1986; March 1, 1992.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-12

54-02-07-02. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Denial" means the board's refusal to issue a current license upon application.
2. "Probation" means issuance of a current license marked "encumbered", and identification of specific requirements.
3. "Reprimand" means written communication to the licensee stating the board's concerns, and public notification of the licensee's name, address, and reason for the reprimand.
4. "Revocation" means the withdrawal by the board of the license to practice nursing for a specified length of time of no less than one year.
5. "Suspension" means the withholding by the board of the license to practice nursing for a specified length of time.
6. "Unprofessional conduct" includes, but is not limited to:
  - a. Failure to provide nursing care because of diagnosis, age, sex, race, religion, creed, or color.
  - b. Abusing a patient verbally, physically, emotionally, or sexually.
  - c. Failure to supervise persons to whom nursing functions have been delegated or assigning unqualified persons to perform functions of licensed nurses.
  - d. The practice of nursing without sufficient knowledge, skills, or nursing judgment.
  - e. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of patient, employee, or employer records.
  - f. ~~Aiding~~ Performing an act prohibited by law or rule, aiding or abetting another person in performing an act prohibited by law or rule, or failure to perform an act required by law, rule, or standard of professional care.

- g. Diverting supplies, equipment, or drugs for personal use or unauthorized use.
- h. Misuse or betrayal of a trust or confidence.
- i. Deliberate exploitation of a patient or family, or both, for financial or personal gain.
- j. Failure to comply with acceptable standards of nursing practice which places a patient at risk.
- k. Suspension of prescriptive authority for cause.
- l. Use of a title denoting advanced nursing practice without the advanced registered nurse practitioner license.

History: Effective August 1, 1988; amended effective October 1, 1989; March 1, 1992.

General Authority: NDCC 43-12.1-08(14)

Law Implemented: NDCC 43-12.1-14

54-02-08-02. Eligibility. Applicants for a temporary ~~practical nurse license or a temporary registered nurse license~~ must submit a completed notarized application and pay the endorsement fee of ~~sixty-five dollars for registered nurses or forty dollars for licensed practical nurses~~ seventy-five dollars. The application will include notice of intent to complete the educational requirements for license by endorsement.

History: Effective October 1, 1989; amended effective March 1, 1992.

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

Law Implemented: NDCC 43-12.1-08(19)

54-04.1-01-01. Nursing ~~scholarship or education~~ loan program. The board of nursing shall create a nursing ~~scholarship or education~~ loan program. The program must be funded by:

1. Eight dollars of each registered nurse and licensed practical nurse renewal fee or four dollars of each registered nurse and licensed practical nurse annual renewal fee.
2. Principle and interest payments ~~from scholarship or loan recipients~~ made toward nursing education loans that do not qualify for repayment by employment.
3. Donations and bequests from individuals wishing to further the intent of the ~~scholarship or~~ nursing education loan program.
4. Additional funds as may from time to time be designated by the board.

History: Effective October 1, 1987; amended effective November 1, 1990; March 1, 1992.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-01-02. Program continuation. Individuals awarded a scholarship or loan prior to July 1, 1987, shall have the following options: Repealed effective March 1, 1992.

1. Individuals continuing in the nursing education program may apply for additional funds as provided in chapter ~~54-04.1-03~~. If additional funds are granted, repayment of the entire award must be according to chapter ~~54-04.1-04~~ or ~~54-04.1-05~~.
2. Individuals continuing in the nursing education program who do not apply or who are not awarded additional funds shall be required to repay according to chapter ~~54-04.1-04~~ or ~~54-04.1-05~~.
3. Individuals who are in the process of repaying by employment may continue repayment according to article ~~54-04~~ or choose to repay according to article ~~54-04.1~~.
4. Individuals who are in the process of making monetary repayments shall continue repayment according to article ~~54-04~~. The note will continue to bear interest at the rate of three percent per annum.

History: Effective October 1, 1987.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-02-01. Qualifications. To qualify for a nursing scholarship or education loan, the applicant must:

1. Be a United States citizen and a North Dakota resident.
2. Demonstrate financial need.
3. Have been accepted into a board-approved nursing education program or be enrolled in a board-approved nursing education program for practical nurses or registered nurses.
4. Have been accepted into or be enrolled in an educational program for graduate nurses that is acceptable to the board.
5. Have all necessary application forms completed and on file in the board office by July first of the year in which they wish to be considered for a scholarship nursing education loan.  
Application Applications for nurse refresher course

~~scholarship~~ nursing education loans will be considered at any board meeting.

History: Effective October 1, 1987; amended effective October 1, 1989; March 1, 1992.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-03-01. Amount of ~~awards~~ loans. To the extent funds are available, ~~scholarship loan awards~~ educational loans will be made in the following amounts:

1. Practical nurse students may receive ~~an award~~ a loan of no more than one thousand dollars for each year of the nursing program.
2. Licensed practical nurse students who plan to complete studies for an associate degree in nursing may receive ~~an award~~ a loan of no more than one thousand dollars.
3. Registered nurse students and graduate nurse students who plan to complete studies for a baccalaureate degree in nursing may receive ~~an award~~ a loan of no more than one thousand dollars ~~a year~~ for each of the last three two years of the nursing program.
4. Graduate nurse students may receive ~~an award~~ a loan of no more than ~~five thousand two thousand five hundred~~ dollars to complete studies for a master's degree in nursing ~~or a doctorate~~. Graduate nurse students pursuing a doctorate may receive a loan of up to five thousand dollars.
5. Licensed practical nurses or registered nurses may receive ~~an award~~ a loan of no more than one thousand dollars for study in a nursing specialty program ~~or a nurse refresher course~~.
6. Licensed practical nurses or registered nurses may receive a loan of no more than the cost of the course and the cost of the textbook for a board-approved nurse refresher course.

History: Effective October 1, 1987; amended effective October 1, 1989; March 1, 1992.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-03-02. Note required. Before ~~disbursements are made~~ the loan is disbursed, recipients and their board-approved cosigner must ~~be required to~~ sign a note to the North Dakota board of nursing for repayment of the award loan. ~~The note must be signed by the recipient and a cosigner who is acceptable to the board.~~



History: Effective October 1, 1987; amended effective March 1, 1992.  
General Authority: NDCC 43-12-27  
Law Implemented: NDCC 43-12-27

54-04.1-03-03. Disbursements. Disbursements of the awards loans will be made as follows:

1. For programs leading to initial licensure as a licensed practical nurse or a registered nurse, the total award amount of the loan will be divided into equal payments for each academic term needed to complete the program.
2. For licensed practical nurses who plan to complete studies for an associate degree and licensed registered nurses who plan to complete studies for a baccalaureate degree, the total award amount of the loan will be divided into equal payments for each academic term needed to complete the program.
3. For graduate nurse students, who plan to complete studies leading to academic degrees beyond the baccalaureate a master's degree, the total award amount of the loan will be made in one payment. For graduate nurse students who plan to complete studies leading to a doctoral degree, two equal payments will be made. The first payment will be made upon acceptance into the doctoral program, the second payment upon achieving candidacy status.

History: Effective October 1, 1987; amended effective March 1, 1992.  
General Authority: NDCC 43-12-27  
Law Implemented: NDCC 43-12-27

54-04.1-03-04. Subsequent disbursements. Subsequent disbursements of the awards loan, to be made beyond the initial disbursements made under the formula set out in section 54-04.1-03-03, will be made if the recipient provides the board with proof of maintaining a satisfactory grade for progression in the program as determined by the faculty of the nursing program.

History: Effective October 1, 1987; amended effective March 1, 1992.  
General Authority: NDCC 43-12-27  
Law Implemented: NDCC 43-12-27

54-04.1-03-05. Disbursements - Where made. For practical nurse students and registered nurse students, the disbursements will be made to the school they are attending. For graduate nurse students and registered nurse or licensed practical nurses attending specialty courses, the disbursements will be made directly to the student. A receipt of payment signed by the scholarship loan recipient will be required when the award disbursement is made directly to the recipient.

History: Effective October 1, 1987; amended effective March 1, 1992.  
General Authority: NDCC 43-12-27  
Law Implemented: NDCC 43-12-27

54-04.1-04-01. ~~Conversion of loan to scholarship~~ Repayment of loan by employment. The loan may be ~~converted to a scholarship through repaid by~~ nursing employment in North Dakota after graduation. The ~~conversion repayment~~ rate will be one dollar per hour of employment.

History: Effective October 1, 1987; amended effective March 1, 1992.  
General Authority: NDCC 43-12-27  
Law Implemented: NDCC 43-12-27

54-04.1-04-02. Notification of employment. Within sixty days after graduation, recipients must provide the board of nursing with the name and address of their employer ~~or notify the board if they are unemployed.~~ If the loan recipient does not become employed within sixty days of graduation, monetary repayment must begin according to section 54-04.1-05-01.

History: Effective October 1, 1987; amended effective March 1, 1992.  
General Authority: NDCC 43-12-27  
Law Implemented: NDCC 43-12-27

54-04.1-04-03. Termination of employment. If employment in North Dakota is terminated before the ~~complete conversion of the loan to scholarship,~~ loan is canceled, nine percent interest will begin to accrue on the unpaid balance from the date of termination of employment.

History: Effective October 1, 1987; amended effective March 1, 1992.  
General Authority: NDCC 43-12-27  
Law Implemented: NDCC 43-12-27

54-04.1-04-04. Employment affidavits required. Employment credit will be given for those ~~scholarships~~ nursing education loans qualifying for loan ~~conversion~~ repayment under section 54-04.1-04-01 ~~when upon receipt of a completed, notarized employment affidavit is received from an employer.~~ Upon receipt of the required employment credit, the notes. The note will be canceled and returned to the recipient when the entire loan has been repaid.

History: Effective October 1, 1987; amended effective March 1, 1992.  
General Authority: NDCC 43-12-27  
Law Implemented: NDCC 43-12-27

54-04.1-05-01. Repayment requirements. Repayment of the loan must meet the following requirements:

1. Payments must begin within sixty days after graduation or withdrawal from the nursing program unless such period is extended by the board.
2. ~~Pay a~~ A rate of nine percent annual interest ~~which~~ will accrue on the unpaid balance until the note is canceled.
3. Payments of at least fifty dollars per month or a specific amount determined by the board must be made to the North Dakota board of nursing by the fifth day of each month until the note is canceled.

History: Effective October 1, 1987; amended effective March 1, 1992.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

54-04.1-05-02. Demand for payment. Demand for payment will be made on delinquent accounts. If the account is not brought up to date within thirty days of receipt of the demand for payment, the account will be referred to the collection agency and the board may initiate disciplinary action against the licensee for unprofessional conduct.

History: Effective October 1, 1987; amended effective March 1, 1992.

General Authority: NDCC 43-12-27

Law Implemented: NDCC 43-12-27

## CHAPTER 54-05-03

### REGISTERED NURSE PRACTICE IN EXPANDED ROLES

[Repealed effective March 1, 1992]

STAFF COMMENT: Chapter 54-05-03.1 contains all new material but is not underscored so as to improve readability.

## CHAPTER 54-05-03.1

### ADVANCED REGISTERED NURSE PRACTICE

#### Section

54-05-03.1-01	Statement of Intent
54-05-03.1-02	Board Authority - Title - Abbreviation
54-05-03.1-03	Definitions
54-05-03.1-04	Initial Requirements for Advanced Licensure
54-05-03.1-05	Temporary Permit
54-05-03.1-06	Requirements for Advanced Licensure Renewal
54-05-03.1-07	Termination of Advanced Licensure
54-05-03.1-08	Prescriptive Authority Committee
54-05-03.1-09	Requirements for Prescriptive Authority
54-05-03.1-10	Authority to Prescribe

54-05-03.1-11	Prescriptive Authority Renewal
54-05-03.1-12	Change in Physician Collaboration and Consultation
54-05-03.1-13	Suspension or Enjoining of Prescriptive Authority
54-05-03.1-14	Encumbered License
54-05-03.1-15	Recognition at Effective Date

54-05-03.1-01. Statement of intent. The 1977 legislative assembly enacted legislation that recognized the performance of additional acts to be performed by registered nurses practicing in expanded roles and gave the board of nursing the power to set standards for nurses practicing in specialized roles. From 1980 to 1991, the board has licensed advanced practitioners in nursing as nurse clinicians, nurse practitioners, clinical nurse specialists, certified nurse midwives, and certified registered nurse anesthetists. The board recognizes in these rules that these titles may continue to be used by nurses with the required credentials. Other titles may be recognized by the board upon application.

The 1991 legislative assembly added prescriptive practices under the supervision of a licensed physician to the additional acts and authorized a prescriptive authority committee consisting of two members of the board of nursing, one physician appointed by the board of medical examiners, and one pharmacist appointed by the board of pharmacy to recommend rules regarding prescriptive authority for adoption by the board of nursing.

The scope of practice for a registered nurse with advanced licensure is based upon an understanding that a broad range of health care services can be appropriately and competently provided by a registered nurse with validated knowledge, skills, and abilities in specific practice areas. The health care needs of citizens in North Dakota require that nurses in advanced practice roles provide care to the fullest extent of their knowledge, skills, and abilities. The advanced registered nurse practitioner retains the responsibility and accountability for that scope of practice and is ultimately accountable to the patient within the Nurse Practices Act.

History: Effective March 1, 1992.  
 General Authority: NDCC 43-12.1-08  
 Law Implemented: NDCC 43-12.1-02(6)

54-05-03.1-02. Board authority - Title - Abbreviation. The board shall authorize the advanced practice of nursing and use of the title "advanced registered nurse practitioner" and the abbreviation "a.r.n.p." to a registered nurse who has submitted evidence of advanced knowledge, skills, and abilities in a defined area of nursing practice. Registered nurses who meet the qualifications of the "advanced registered nurse practitioner" and have been issued the advanced license may use other titles in announcing their practice to the public. The title to be used must be submitted to the board for approval prior to usage in lieu of the designated "advanced registered nurse practitioner" title. No

person may use the advanced registered nurse practitioner title or the initials "a.r.n.p." or any other title denoting advanced nurse practice without the express authority of the board of nursing to do so.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-08(16)

54-05-03.1-03. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Certification" means a process of voluntary recognition by a national nursing organization of the applicant's advanced knowledge, skills, and abilities in a defined area of nursing practice. The certification process measures the theoretical and clinical content denoted in the advanced scope of practice, and is developed in accordance with generally accepted standards of validity and reliability. The certification examination is open only to registered nurses who have successfully completed an advanced nursing education program.
2. "Scope of practice" means the delineation of the applicant's practice; including dimension and boundary and focus. The scope of practice statement identifies the nature and extent of the applicant's practice and includes focus of care, elements of care, type of client, location of practice, and collaboration or consultation, or both, patterns.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-08(16)

54-05-03.1-04. Initial requirements for advanced licensure. Applicants for advanced registered nurse licensure must:

1. Possess a current license to practice as a registered nurse in North Dakota.
2. Submit evidence of completion of an advanced nursing education program.
3. Submit evidence of certification by a national nursing organization in the specific area of nursing practice.
4. Submit a completed notarized application and pay the fee of one hundred dollars.
5. Submit a scope of practice statement according to established guidelines for review and approval by the board of nursing.



Applicants who have been issued a registered nurse temporary permit and meet all of the qualifications for advanced licensure may be issued a temporary advanced registered nurse practitioner license with the same date of expiration. The advanced license will be issued to coincide with the renewal date of the initial registered nurse license.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-08(16)

54-05-03.1-05. Temporary permit. Applicants for advanced licensure who meet all other qualifications may be issued a temporary advanced registered nurse license until the results of the first national nursing certification examination, for which the candidate is eligible after completion of the program, have been received. Verification of eligibility for the examination may be required. If the applicant fails the first examination for which the applicant is eligible, the applicant may continue to practice if supervised by a licensed provider of that specialty and the board is notified. If the applicant fails the second examination for which the applicant is eligible, the individual may no longer practice in the advanced role.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-08(16)

54-05-03.1-06. Requirements for advanced licensure renewal. The advanced registered nurse license is valid for the same period of time as the applicant's registered nurse license. Applicants for renewal of the advanced registered nurse license must renew their registered nurse license, and pay an advanced licensure renewal fee of forty dollars, submit evidence of current certification, and submit a scope of practice statement for review and approval by the board.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-08(16)

54-05-03.1-07. Termination of advanced licensure. The advanced license may be terminated by the board when the licensee has:

1. Been found in violation of any provision of North Dakota Century Code section 43-12.1-14.
2. Failed to maintain national certification.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-08(16)

54-05-03.1-08. Prescriptive authority committee. Prior to the first regular meeting after July first of each year, the board will request an appointment to the prescriptive authority committee from the board of medical examiners and the board of pharmacy. The board shall appoint two board members, at least one of whom must be a registered nurse board member, at the July board meeting. The committee will meet at least once each year to review rules for prescriptive authority; oversee the process of granting prescriptive authority; and recommend changes to the board. Reimbursement for the costs associated with attending the meetings will be the responsibility of the respective boards appointing the members.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-08.1

54-05-03.1-09. Requirements for prescriptive authority. Applicants for prescriptive authority shall:

1. Be currently licensed as an advanced registered nurse practitioner in North Dakota.
2. Have completed an advanced nursing education program.
3. Provide evidence of completion of thirty contact hours of education in pharmacotherapy related to the applicant's scope of advanced practice within the past three years that:
  - a. Include pharmacokinetic principles and their clinical application and the use of pharmacological agents in the prevention of illness, restoration, and maintenance of health.
  - b. Have been obtained within a three-year period of time immediately prior to the date of application for prescriptive authority.
  - c. Have been obtained from study within the advanced formal education program or accredited continuing education programs, or both.
4. Include in the scope of practice statement required under subsection 5 of section 54-05-03.1-04 the nature and extent of the collaboration and consultation with a licensed physician. The statement must include the frequency of the collaboration and consultation, the methods of collaboration and consultation, the arrangements for initiation of contact from both parties, and the methods of documentation of the collaboration or consultation process.

5. Submit an affidavit from the licensed physician acknowledging the manner of review and approval of the planned prescriptive practices.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-08.1

54-05-03.1-10. Authority to prescribe. A registered nurse licensed under this chapter when authorized by the board of nursing may prescribe drugs as defined by chapter 43-15-01 pursuant to applicable state and federal laws. Notice of the prescriptive authority granted will be forwarded to the board of pharmacy.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-02(6)

54-05-03.1-11. Prescriptive authority renewal. To renew the prescriptive authorization, the applicant must:

1. Comply with the requirements of section 54-05-03.1-06 and include in the scope of practice statement the nature and extent of the collaboration and consultation with a licensed physician; and submit an affidavit from the licensed physician acknowledging the manner of review and approval of the planned prescriptive practices. Evidence of the collaboration and consultation with the licensed physician may be requested by the board.
2. Provide documentation of fifteen contact hours of continuing education during the previous two years that includes pharmacotherapy related to the scope of practice.
3. Submit a completed and notarized prescriptive practice renewal application.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-02(6)

54-05-03.1-12. Change in physician collaboration and consultation. Evidence of documentation of the collaboration and consultation with the licensed physician must be submitted if there is a change in the licensed physician providing the collaboration and consultation. The documentation and a revised scope of practice statement must be submitted within ninety days of the change in the licensed physician.

History: Effective March 1, 1992.

General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-02(6)

54-05-03.1-13. Suspension or enjoining of prescriptive authority. The prescriptive authority granted to an advanced registered nurse practitioner may be temporarily suspended or enjoined according to provisions of North Dakota Century Code chapters 28-32 and 32-06, when the advanced registered nurse practitioner has:

1. Not maintained current licensure as an advanced registered nurse practitioner;
2. Prescribed outside the scope of practice or for other than therapeutic purposes; or
3. Violated any state or federal law or regulations applicable to prescriptions.

Notice of suspension or injunctive action regarding prescriptive authority will be forwarded to the board of pharmacy and the board of medical examiners.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-02(6)

54-05-03.1-14. Encumbered license. Encumbrances placed on the advanced registered nurse license will also be placed on the registered nurse license.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-02(6)

54-05-03.1-15. Recognition at effective date. Any registered nurse with an advanced license as a nurse clinician, nurse practitioner, clinical nurse specialist, nurse midwife, or certified registered nurse anesthetist on March 1, 1992, must continue to be recognized as an advanced registered nurse practitioner, and is eligible for renewal of the advanced registered nurse practitioner license under the provision of this title. These rules may not be construed to limit or restrict an advanced registered nurse's scope of practice as defined by the advanced registered nurse's scope of practice statement previously approved by the board.

History: Effective March 1, 1992.  
General Authority: NDCC 43-12.1-08  
Law Implemented: NDCC 43-12.1-08(16)

CHAPTER 54-06-01  
GENERAL PROVISIONS

[Repealed effective March 1, 1992]

54-06-02-03. Recording of abuse or neglect. The registry shall include documentation of abuse or neglect by the nurse assistant when verified by the state department of health and consolidated laboratories. Repealed effective March 1, 1992.

History: Effective March 1, 1990.

General Authority: ~~NBCC 43-12.1-08(18)~~

Law Implemented: ~~NBCC 43-12.1-08(17)~~





TITLE 61.5  
Physical Therapist, Examining Committee for



APRIL 1992

61.5-01-01-01. Organization of the state examining committee for physical therapists.

1. **History.** The state examining committee for physical therapists was created in 1959 to assist the state board of medical examiners in the examination and registration of physical therapists in North Dakota. While it operated as a separate committee, it was by law an advisory committee to the state board of medical examiners. The forty-sixth legislative assembly in 1979 revamped most of North Dakota Century Code chapter 43-26 on physical therapists, and in the process made the committee a separate entity with complete jurisdiction over the examination and registration of physical therapists.
2. **Committee membership.** The committee consists of six persons appointed by the governor. Three committee members must be registered physical therapists, two members must be licensed physicians, and one member must be a nonhealth care professional. Committee terms are to be staggered and are for five years. Possible nominations to the committee will be solicited by the committee's secretary from all registered physical therapists in the state at the time notices for registration renewal are sent out.
3. **Meetings.** The committee shall hold at least one annual meeting, and such other meetings as may be called by the president. Any committee member who fails to attend two consecutive annual meetings shall have been deemed to have resigned unless the member has reasons satisfactory to the committee for being unable to attend.
4. **Compensation.** Committee members shall receive expenses from committee funds for each day or a portion thereof spent in

committee work as provided for other state officers in North Dakota Century Code chapter 44-08.

5. Secretary. ~~North Dakota Century Code section 43-26-05 authorizes the~~ The committee to shall designate a secretary, who does not have to be a committee member, but who must be a North Dakota licensed physical therapist, and to shall compensate any person it hires to administer the committee's duties.

The committee's secretary is:

Mrs. Lynn G. Kubousek  
Box 69  
Grafton, North Dakota 58237

History: Effective December 1, 1980; amended effective August 1, 1983; April 1, 1988; April 1, 1992.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1, 43-26-05

61.5-01-02-01. Definitions. Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "A school of physical therapy or a program of physical therapist assistant training approved by the committee" is a curriculum approved by the ~~council on medical education of the~~ American medical association or the American physical therapy association.
2. "Committee" means the North Dakota state examining committee for physical therapists.
3. "Direct or onsite supervision" means personal direction ~~and or~~ observation, and requires that the registered physical therapist must be physically present with the assistant, the aide, or the student on the premises at the time of treatment.
4. "Direction" means the requirement that the physical therapist maintain continuous verbal and written contact with the physical therapist assistant, including onsite supervision and instruction adequate to ensure the safety and welfare of the patient.
- ~~10-~~ 5. "~~Professional examination service~~ National examination" or "examination" means the examination ~~promulgated~~ adopted by the ~~professional examination service of the~~ American physical therapy association or the federation of state boards of physical therapy.



- 5- 6. "Passing score on the ~~professional examination service national~~ examination" is a score higher than 1.5 standard deviation below the national mean for the examination taken.
- 6- 7. "Physical therapist" means a person who applies physical therapy.
- 7- 8. "Physical therapist assistant" means a person who assists, under the onsite direction of a registered physical therapist, in the practice of physical therapy and who performs such delegated procedures commensurate with the assistant's education and training. No more than two physical therapist assistants may be supervised by one physical therapist.
- 8- 9. "Physical therapy" means the art and science of a health specialty concerned with the prevention of disability and the physical rehabilitation for congenital or acquired disabilities resulting from, or secondary to, injury or disease. The practice of physical therapy means the practice of the health specialty, and encompasses physical therapy evaluation, treatment planning, instruction, and consultative services, including:
- a. Performing and interpreting tests and measurements as an aid to physical therapy treatment.
  - b. Planning initial and subsequent treatment programs on the basis of test findings.
  - c. Administering treatment by therapeutic exercise, neurodevelopmental procedures, therapeutic massage, mechanical devices, and therapeutic agents which employ the physical, chemical, and other properties of air, water, heat, cold, electricity, sound, and radiant energy for the purpose of correcting or alleviating any physical or mental condition, or preventing the development of any physical or mental disability.
- 9- 10. "Physical therapy aides" also known as health care aides, orderlies, etc., constitute the category of personnel not otherwise defined in this title who assist the physical therapy service as supportive personnel.
11. ~~"Referral" means a requirement that the physical therapist has verbal or written contact with the physician who refers the patient to the physical therapist.~~
- 12- "Student" is an individual who is currently engaged in the fulfillment of a physical therapy or physical therapist assistant educational program approved by the committee.

History: Effective December 1, 1980; amended effective April 1, 1992.  
 General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-01, 43-26-04, 43-26-06, 43-26-10

61.5-02-01-03. Repeating examinations. An applicant who fails an examination may repeat the examination, but must pay another examination fee each time the examination is repeated. An applicant may write the examination three times. These examinations must be taken on consecutively scheduled testing dates. After the third time, an applicant must wait one calendar year before again taking the examination.

History: Effective December 1, 1980; amended effective April 1, 1992.

General Authority: NDCC 43-26-05, 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06

61.5-02-01-04. Eligibility to take examination. An applicant must have graduated from an approved program prior to writing the examination. An applicant, at the committee's discretion, may take the examination prior to graduation.

History: Effective April 1, 1992.

General Authority: NDCC 43-26-05, 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06

61.5-02-02-02. Additional registration requirements for graduates of approved curricula.

1. Applicant must pay an examination fee for the professional examination service national examination as established by the professional examination service committee.
2. Applicant must pass the professional examination service national examination (1.5 standard deviation below the national mean is considered passing in this state).
3. The committee may waive the requirement to take the professional examination service national examination if the applicant is currently licensed in another state and has satisfactorily passed the examination of the American registry of physical therapists.
4. If the applicant has not practiced physical therapy for five years or more, the applicant must take or retake the national examination.

History: Effective December 1, 1980; amended effective April 1, 1992.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06

61.5-02-02-03. Registration requirements for graduates of foreign curricula.

1. A completed application form.
2. An application fee as established by the committee.
3. A photocopy of an original certificate or diploma verifying graduation from a physical therapy or physical ~~therapy~~ therapist assistant curricula which is approved in the country in which the applicant received the education ~~and in which there was, at the time of graduation, a member organization of the world confederation for physical therapy.~~
4. Evidence satisfactory to the committee to substantiate that the school or course from which the applicant was graduated had educational requirements comparable to ~~those approved by the council on medical education of the American medical association, or programs approved by the American physical therapy association, or both.~~
5. ~~Verification of eligibility for, or membership in, a member organization of the world confederation for physical therapy.~~
- ~~6.~~ A letter from a physical therapist, registered and actively practicing in North Dakota, stating that the applicant will work under that physical therapist's direct supervision for a period of six months.
- ~~7.~~ 6. Applicant must pay an examination fee for the ~~professional examination service examination~~ as established by the ~~professional examination service committee.~~
- ~~8.~~ 7. Applicant must take the first ~~professional examination service national~~ examination offered by the committee following the applicant's arrival in the state.
- ~~9.~~ 8. Applicant must receive a passing score on the ~~professional examination service national~~ examination.
- ~~10.~~ 9. Applicant may have ~~professional national~~ examination ~~service~~ scores transferred by the ~~interstate reporting service testing agency~~ if the applicant has taken the ~~professional examination service national~~ examination in some other state within the United States.
- ~~11.~~ 10. If an applicant has satisfactorily completed the ~~professional examination service national~~ examination and other requirements for registration in another state, and has had at least six months physical therapy or physical therapist assistant working experience in the United States, the applicant ~~will~~ may be excused from the requirement of working with a physical therapist who is registered in North Dakota prior to registration by the state of North Dakota.

- ~~12.~~ 11. At the committee's discretion, an interview with the committee or any designee or designees thereof may be required.

History: Effective December 1, 1980; amended effective April 1, 1992.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06

61.5-02-02-04. Types of registration.

1. Temporary registration.

- a. Before beginning as a physical therapist or physical therapist assistant in North Dakota, an applicant must file with the committee a written application for registration and any other documents the committee may require. A temporary registration ~~shall~~ may then be issued. The committee ~~shall~~ may issue a temporary registration to a person who has applied for registration and is eligible to take the ~~professional examination service~~ national examination. This temporary registration allows a person to work with onsite supervision by a physical therapist.
- b. A temporary registration may be issued to:
  - (1) United States trained applicants for registration by examination upon receipt of a satisfactory application, the ~~professional examination service~~ national examination fee, and an official transcript of credits.
  - (2) United States trained applicants for registration by endorsement upon receipt of satisfactory application, fee, official transcript of credits, copy of current registration, ~~verification of current registration,~~ and a copy of the letter to the interstate reporting service requesting the transfer of scores.
  - (3) Foreign trained applicants for registration by examination upon receipt of all general requirements, providing all are satisfactory to the committee, and providing the application and ~~professional examination service~~ national examination fees have been paid.
  - (4) Foreign trained applicants for registration by endorsement upon receipt of all requirements, providing all are satisfactory to the committee.
- c. The temporary registration may not exceed three months and may, at the committee's discretion, be renewed for an additional ~~three~~ six months.

d. With respect to the application of those foreign ~~trained~~ educated applicants who must serve a preceptorship, the committee cannot make a final determination until the preceptorship is completed, so the following provisions shall apply:

- (1) If the applicant passes the first examination, the temporary registration is extended until the completion of the required, continuous preceptorship.
- (2) If the applicant fails the first examination, the applicant is required to apply to take another examination. If the applicant passes the next possible examination, the temporary registration is extended until completion of the required, continuous preceptorship.
- (3) If the applicant fails the next possible examination, the temporary registration ~~will be rescinded~~ may be extended at the committee's discretion.

~~3.~~ 2. Additional requirements for registration by endorsement are:

- a. ~~Copy of current registration from the state in which applicant was registered by examination.~~
- ~~b.~~ Verification of ~~current~~ registration from the physical therapy examining ~~board from the~~ of all state boards of all states in which registration was received by ~~examination~~ the therapist was registered.
- ~~c.~~ b. Copy of scores on the ~~professional examination service~~ national examination transmitted by ~~the~~ an interstate reporting service.

~~2.~~ 3. Official registration. When all requirements have been met, an official registration shall be issued giving each registrant a permanent registration number.

History: Effective December 1, 1980; amended effective April 1, 1992.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-06, 43-26-08

61.5-02-02-05. Renewal of registration.

1. Registrations shall be renewed annually by January thirty-first.
2. If a registrant fails to receive the renewal notice, it is the responsibility of the registrant to contact the committee before the January thirty-first deadline.



3. Any registrant who fails to make application for renewal of registration by January thirty-first will, at the committee's discretion, pay a late renewal fee as prescribed in section 61.5-02-03-01.
4. A registration expires if not renewed by January thirty-first.
5. If a registration has expired for more than a year, the registrant is not eligible for renewal, but must apply for registration. However, registrants whose registrations have lapsed and who have been unregistered for more than one year but less than five years from the last renewal may not be required to take the national examination.

History: Effective December 1, 1980; amended effective April 1, 1992.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-09

61.5-03-01-01. Continuing education requirement. The committee may shall establish, and revise as it deems necessary, rules and regulations to require some form or system of continuing education as a requirement for registration or reregistration as a physical therapist or a physical therapist assistant.

History: Effective December 1, 1980; amended effective April 1, 1992.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-09

61.5-03-01-02. Hours, effective date, and requirements. Effective January 31, 1992, all physical therapists and physical therapist assistants must obtain twenty-five contact hours of continuing education every two years to be eligible for registration or reregistration. One contact hour equals sixty minutes of instruction. There may be no carryover of credit hours to the next reporting period. The committee shall determine reporting groups, methods, and deadlines.

History: Effective April 1, 1992.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-09

STAFF COMMENT: Chapters 61.5-03-02 and 61.5-03-03 contain all new material but are not underscored so as to improve readability.

CHAPTER 61.5-03-02  
COURSES AND CREDIT STANDARDS

Section	
61.5-03-02-01	Course Content
61.5-03-02-02	Credit Standards

61.5-03-02-01. Course content. Twenty-five contact hours are required every two years. At least fifteen of the required hours must be clinically related, five of which may be cardiopulmonary resuscitation. Nonclinical courses must relate to a therapist's job responsibilities. All continuing education courses related to physical therapy sponsored by the American physical therapy association, state physical therapy associations, medical institutions, or educational institutions are automatically approved. Any continuing education courses planned, sponsored, or cosponsored by the arthritis foundation, the American heart association, or other similar national or state health organizations, which meet the credit standards of section 61.5-03-02-02, are automatically approved. Any postsecondary coursework taken at an accredited educational institution will be automatically approved, provided the coursework meets the credit standards.

History: Effective April 1, 1992.  
General Authority: NDCC 43-26-10  
Law Implemented: NDCC 43-26-05, 43-26-09

61.5-03-02-02. Credit standards. The following credit standards apply to any continuing education course that is intended to meet the continuing education requirements for physical therapists or physical therapist assistants:

1. The educational activities must have significant intellectual or practical content dealing primarily with matters directly related to the practice of physical therapy or to the professional responsibility or ethical obligations of the participants.
2. Each person making a presentation at a continuing education course must be qualified by practical or academic experience to teach the subject the person covers.
3. Participants shall attend educational activities in a classroom or other setting suitable for the activity. Video, motion picture, or sound presentations may be used.
4. Credit may not be given for entertainment or recreational activities or programs, employment orientation sessions, holding an office or serving as an organizational delegate, meeting for the purpose of making policy, or noneducational association meetings.

5. Credit may not be given for meals, keynote speeches, introductory or preliminary sessions, postsession activities, and similar events associated with continuing education programs.
6. A person teaching an approved continuing education course must be awarded additional credit for preparation time not to exceed a ratio of five to one between preparation time and presentation time respectively. Presentation time counts as contact hours for continuing education purposes. This credit may be taken for only one course annually.
7. One-half of the required coursework for any reporting period may be acquired through self-study, which involves electronic recordings (whether video or sound) or correspondence work, provided that the recordings must be accompanied by appropriate written materials.

History: Effective April 1, 1992.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-09

#### CHAPTER 61.5-03-03 VERIFICATION OF COMPLIANCE

Section  
61.5-03-03-01      Verification of Compliance

##### 61.5-03-03-01. Verification of compliance.

1. At the January license renewal deadline immediately following their two-year continuing education cycle, registrants shall provide a signed and notarized statement provided by the committee listing the continuing education courses taken and indicating compliance with the required twenty-five hours of continuing education. The committee, in its discretion, may require additional evidence necessary from a registrant to verify compliance.
2. The committee shall periodically select a sample of the registered physical therapists and may request evidence of the continuing education to which they have attested. Documentation may come directly from the registrant or from state or national organizations that maintain those types of records.
3. A person who claims extenuating circumstances in not being able to meet the continuing education requirements shall petition the committee for consideration of those special conditions.

4. As of January 31, 1992, registrants registering in North Dakota for the first time from other states or countries who do not have twenty-five hours of continuing education credits within the last two years will be required to complete thirteen hours of continuing education within a year of their initial registration in North Dakota, and will thereafter be on the two-year continuing education cycle provided in these rules. Effective January 31, 1992, the same requirement will be mandated for any North Dakota resident who seeks reregistration after having allowed his or her previous registration to lapse.

History: Effective April 1, 1992.

General Authority: NDCC 43-26-10

Law Implemented: NDCC 43-26-05, 43-26-09





TITLE 67  
Public Instruction, Department of



MARCH 1992

67-02-02-04. Distance learning instructor - Definition - Qualifications - Certificate.

1. A distance learning instructor means an out-of-state teacher who conducts a class that is broadcast or delivered to a location in North Dakota from outside North Dakota by any form of electronic transmission, including, but not limited to, fiber optic cable, satellite, television, computer, telephone, or microwave.
2. Every distance learning instructor seen or heard in North Dakota must hold a valid North Dakota teaching certificate issued by the superintendent of public instruction. A distance learning instructor shall obtain such a certificate by providing to the superintendent of public instruction:
  - a. A certified copy of a current teaching certificate issued by the state of broadcast origin; and
  - b. Certification that the distance learning instructor meets that state's regular certification standards in the subject area taught via electronic transmission.
3. A North Dakota teaching certificate issued pursuant to this section only allows a distance learning instructor to teach in North Dakota via electronic transmission from outside this state. If a teacher desires to teach in North Dakota while being physically present in North Dakota, the teacher must obtain a teaching certificate pursuant to section 67-02-02-02.
4. A North Dakota teaching certificate issued pursuant to this section is valid for two years.

History: Effective March 1, 1992.

General Authority: NDCC 15-36-01, 28-32-02  
Law Implemented: NDCC 15-36-01

67-02-05-05. Bilingual education or English as second language. Reeducation for a "bilingual education or English as second language" endorsement for any certified teacher may be accomplished by presenting at least sixteen semester hours or twenty-four quarter hours of college coursework in all of the following areas:

1. Foundations. Four semester hours or six quarter hours of college coursework from the following:
  - a. Multicultural education, which involves a knowledge of ethnic groups in North Dakota and the United States, different instructional methods to use with different ethnic and language groups.
  - b. Foundations of bilingual education, which involves models of bilingual education, research on the effectiveness, or lack thereof, of bilingual education, history of bilingual education, and significant laws and court decisions affecting language minority students.
2. Linguistics. Six semester or nine quarter hours of college coursework from the following areas:
  - a. Linguistics, which involves the nature of language, organizational principles of language (phonology, morphology, syntax, semantics), principles of language change and development of language families.
  - b. Psycholinguistics, which involves first and second language, oral and written acquisition processes and learning theories.
  - c. Sociolinguistics, which involves basic sociocultural variables in language use and language learning, types of bilingual and multilingual educational situations, and social determinants of dialect and style.
3. Methods. Two semester or three quarter hours of college coursework from the following:
  - a. Methods of teaching English as a second language to students, which involves an exploration of historical and current instructional approaches in teaching English as second language, from the grammar-translation method to the natural method.
  - b. Methods of teaching bilingual education, which involves an understanding of instructional programs in bilingual

education, such as immersion, transitional, early entry, and late entry.

4. Assessment. Two semester or three quarter hours of college coursework from the following: Assessment and testing of culturally diverse students, which involves a study of culturally appropriate assessment tools and methods of identifying and assessing limited English proficient students.
5. Field experience. Two semester or three quarter hours of college coursework from the following: Field teaching experience with limited English proficient students in a bilingual or English as a second language setting.

History: Effective March 1, 1992.

General Authority: NDCC 15-36-01, 28-32-02

Law Implemented: NDCC 15-36-01





APRIL 1992

67-06-03-01. Provision of information to parent. Upon receipt of a statement of intent, the local superintendent shall provide information to the parent, including the following:

1. The supervising teacher of a supervised program who shall:
  - a. Be a certificated teacher employed by the school district, or if requested by the parent, a certificated teacher employed by a state-approved private or parochial school; and
  - b. Provide a minimum average each month of one hour of supervision for each student per week the minimum amount of student supervision required by law.
2. Each parent is responsible for maintaining a parent cumulative folder for each student which contains a list of the courses taken and documentation of academic progress, including nationally standardized achievement test results for each year the student receives home-based instruction and nationally standardized academic aptitude test results for tests administered twice in the span of grades one through six and once in grade seven or eight.
3. The local school district's expectations of appropriate grade level for each student in the subjects required by statute to be taught. (See North Dakota Century Code sections 15-38-07, 15-41-06, and 15-41-24.) These subjects are as follows:
  - a. At the elementary level: spelling, reading, writing, arithmetic, language, English grammar, geography, United States history, civil government, nature study, elements of agriculture, physiology, and hygiene.

b. At the secondary level:

(1) The following units of study must be made available to all students at least once during each four-year period:

(a) Four units of English;

(b) Three units of mathematics;

(c) Four units of science;

(d) Three units of social studies;

(e) One unit of health and physical education;

(f) One unit of music; and

(g) Six units of any combination of the following course areas: business education, economics and the free enterprise system, foreign language, industrial arts, vocational education. Vocational education includes home economics, agriculture, office education, distributive education, trade industrial, technical, and health occupations.

(2) Four units of high school work is considered the minimum number of any year from the ninth grade through the twelfth grade.

4. Information regarding the nationally standardized achievement test and nationally standardized academic aptitude test must include:

a. The name of the achievement test and academic aptitude test used by the district;

b. The dates of the empirical norming period.

c. The place of test administration must be the child's learning environment; and

d. A statement that the test must be administered by a certificated teacher employed by the district or, if requested by the parent, a certificated teacher employed by a state-approved private or parochial school.

The financial responsibility of the parent for purchasing, administering, and scoring the tests must be as follows: There is no cost to the parent if the tests are administered by a certificated teacher employed by the district. The parent will be responsible for payment of the cost if the

tests are administered by a certificated teacher employed by a state-approved private or parochial school.

5. The school district requirements which must be met before high school credit for a course will be issued include:
  - a. Course content;
  - b. Textbook and materials used;
  - c. Periodic progress report (six-week or nine-week periods);
  - d. Tests used to measure progress; and
  - e. Other pertinent information to establish competency.
6. ~~A list of the~~ The requirements which must be met before a high school diploma will be issued by the school district can assure the superintendent of public instruction that a student has completed the requirements for high school graduation from that district through home-based instruction. The requirements must include:
  - a. ~~The issuance of acceptable high school credits by a school district or a state-approved private or parochial school. That the school district will only accept high school credits issued by high schools approved by this or any other state.~~
  - b. Completion by the student of the credit requirements or student performance standards, or both, for high school graduation as established by the high school district.
7. A copy of state law concerning the requirements of home-based instruction.

History: Effective September 1, 1990; amended effective April 1, 1992.  
General Authority: S.L. 1989, Ch. 198, § 5, S.L. 1991, ch. 181, § 1  
Law Implemented: S.L. 1989, Ch. 198, §§ 4, 5, S.L. 1991, ch. 181, § 1

67-06-03-05. Responsibility to provide the state superintendent with written assurance for high school graduation. When a person has completed the requirements for high school graduation from a high school district through home-based instruction, the school district shall provide written assurance of that fact to the superintendent of public instruction. The written assurance must be provided on a form provided by the superintendent of public instruction and must be issued by an administrator authorized by the school board for that purpose. If the superintendent of public instruction requires a fee for the issuance of a diploma to graduates of a high school through home-based instruction, the school district shall collect that fee from the student and remit it

to the superintendent of public instruction along with the written assurance form.

When a properly issued written assurance form, received by the superintendent of public instruction, clearly shows the person has completed the requirements for high school graduation from the district, and when any required diploma fee has been received by the superintendent of public instruction, the superintendent shall issue a high school diploma to the person that shows high school graduation was achieved through home-based instruction.

History: Effective April 1, 1992.

General Authority: S.L. 1991, Ch. 182, § 1

Law Implemented: S.L. 1991, Ch. 182, § 1



MAY 1992

STAFF COMMENT: Article 67-08 contains all new material but is not underscored so as to improve readability.

ARTICLE 67-08

HOMELESS CHILDREN EDUCATION

Chapter  
67-08-01 Homeless Children Education

CHAPTER 67-08-01  
HOMELESS CHILDREN EDUCATION

Section	
67-08-01-01	Purpose
67-08-01-02	Definition
67-08-01-03	Responsibility

67-08-01-01. Purpose. The purpose of this chapter is to facilitate the enrollment of homeless children of school age in the public school districts of North Dakota to enable them to have access to a free, appropriate public school education.

History: Effective May 1, 1992.  
General Authority: NDCC 15-47-01.1  
Law Implemented: NDCC 15-47-01.1

67-08-01-02. Definition. In this article and for the purposes of North Dakota Century Code section 15-47-01.1, "homeless child or youth" means a child or youth between the ages of six and eighteen who lacks a fixed, regular, and adequate nighttime residence and includes a child or youth who is living on the street, in a car, tent, abandoned building, some other form of shelter not designed as a permanent home, or who is living in a community shelter facility.

History: Effective May 1, 1992.  
General Authority: NDCC 15-47-01.1  
Law Implemented: NDCC 15-47-01.1

67-08-01-03. Responsibility. A public school district must:

1. Provide an appropriate free public school education to a homeless child or youth who is found within the district, whether or not the child or youth is enrolled in school.
2. Post information at community shelters and other locations in the district (where services or assistance is provided to the homeless) encouraging homeless children of school age to enroll in the public school.
3. Examine and revise, if necessary, existing school policies or rules that create barriers to the enrollment of homeless children, consistent with this chapter.

History: Effective May 1, 1992.  
General Authority: NDCC 15-47-01.1  
Law Implemented: NDCC 15-47-01.1

TITLE 69  
Public Service Commission



FEBRUARY 1992

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of ~~October 1, 1989~~ July 15, 1991, are adopted by reference:

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

Copies of these regulations may be obtained from:

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

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

69-10-03-01. National Institute of Standards and Technology Handbook 44. Except as modified in this article, the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices in North Dakota shall conform to the requirements of the ~~1990~~ 1991 edition of the National Institute of Standards and



Technology Handbook 44, issued ~~September 1989~~ October 1990, which is adopted by reference. Copies of the handbook may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective October 1, 1988; December 1, 1990; February 1, 1992.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-07

APRIL 1992

69-10-01-01. Definitions. ~~In~~ As used in this chapter, unless the context or subject matter otherwise requires:

1. "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
2. ~~"Commercial trade"~~ "Commerce" means the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale, hire, or reward.
2. ~~"Director"~~ means the head of the division of weights and measures.
3. ~~"Division inspector"~~ means full-time employees of the division performing their duties as prescribed by the director.
4. 3. "Registered service person" means the bearer of a permit a person authorized by the commission to remove an official rejection tag seal placed on a weighing or measuring device by a division inspector or to certify weighing and measuring devices described in North Dakota Century Code section 64-02-13.
4. "Seal" means marking a weighing or measuring device to show certification or rejection.
5. "Single draft weighing" is determined by means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
6. "Standard" means test equipment used for certifying weighing or measuring devices.

7. "Weights and measures inspector" means a commission employee in the weights and measures division performing duties set by the commission.

History: Amended effective April 1, 1992.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-01-02. Repair Calibration by other than a registered service person. Any weighing or measuring device repaired or serviced by anyone A person, other than a registered service person, who calibrates a weighing or measuring device, must report all repair or service performed to the division of weights and measures the calibration to the commission. The device must then be certified by a weights and measures inspector or a registered service person, as restricted by section 69-10-04-02.1, before the device can be used in commercial trade commerce.

History: Amended effective April 1, 1992.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-02.1. Certification. Weighing and measuring devices may only be certified by the commission or a registered service person.

History: Effective April 1, 1992.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03. Tagging and sealing Sealing. No All weighing or measuring device in any public place of business shall devices used in commerce must be left untagged or unsealed certified and sealed.

History: Amended effective April 1, 1992.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-04. Registration of new devices - Moving existing devices. Any new, used, or repaired weighing or measuring device shipped or resold in North Dakota shall be reported to the division for inspection before installation. When, for any reason, a weighing or measuring device has been removed from its mountings or piers, the division must first be contacted to determine if the device is in accordance with the requirements of these rules before it can once again be installed or used in North Dakota. Repealed effective April 1, 1992.

General Authority: ~~NDCC 64-02-03~~

Law Implemented: ~~NDCC 64-02-02, 64-02-13~~

69-10-01-05. Rejected devices. Once a weighing or measuring device has been rejected ~~for repairs~~, the device ~~shall~~ may not be used in ~~commercial trade~~ commerce until a ~~division~~ weights and measures inspector ~~has inspected, tested, approved, and affixed an approval tag to it,~~ or a registered service person has placed the device in service certified the device.

History: Amended effective April 1, 1992.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-06. Liquefied petroleum gas meters. All liquefied petroleum gas liquid dispensing meters must be equipped with an automatic temperature compensator. No calibration will be required of any tank which is not used for the purpose of measuring, or which is equipped with a meter, nor shall vehicle tanks loaded from meters and carrying a printed ticket showing gallonage be required to be calibrated. A separate meter is required for each product dispensed. Repealed effective April 1, 1992.

General Authority: ~~NDCC 64-04-04~~

Law Implemented: ~~NDCC 64-04-02~~

69-10-03-02. Adequate weights and testing equipment standards. In repairing scales, standard test weights of sufficient quantity, Only standards annually certified by the commission, will may be required. For liquid meters, a prover tank certified by the commission with a minimum capacity of fifty gallons {189.27 liters} is required. For gasoline pump repair and adjustment, a five-gallon {18.93-liter} test measure certified by the commission is required used to certify weighing and measuring devices. However, standards annually certified by another state or the national institute of standards and technology may be used if a legible copy of the certification is first filed with the commission.

History: Amended effective April 1, 1992.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-03-03. Master test weights and prover tanks. Master test weights and prover tanks used in the repair, inspection, and installation of weighing and measuring devices used in commercial trade must be certified at the discretion of the division of weights and measures for accuracy. Such equipment shall be used only for testing. Testing equipment certified by any other state during the year for which certification is sought will be approved upon receipt of verification of the equipment from the authorized official of the other state. Repealed effective April 1, 1992.

General Authority: ~~NDCC 64-02-03~~



Law Implemented: ~~NDCC 64-02-07~~

69-10-04-01. Voluntary registration Registration of service persons and agencies. A bearer of a placing in service permit shall have registered service person has the authority to remove an official rejection tag placed on a certify weighing or measuring device by the authority of the commission and place devices described in North Dakota Century Code section 64-02-13 and to remove an official rejection seal and place the device in service until such time a division weights and measures inspector can make an official examination of recertify the device. Placing in service report blanks will be furnished registrant by the commission and are to be mailed to the division of weights and measures upon removal of the rejection tag from the weighing and measuring device.

History: Amended effective April 1, 1992.  
General Authority: NDCC 64-02-03  
Law Implemented: NDCC 64-02-02

69-10-04-02. Privileges of a voluntary registrant Application for registration of a service person. It shall be is the policy of the commission to accept voluntary an annual application for registration of an individual or an agency that provided a natural person who provides acceptable evidence that the individual or agency person is fully qualified to install, service, repair or recondition certify a commercial weighing or measuring device; has a thorough working knowledge of all weights and measure laws, rules, and regulations; and has possession of adequate weights and testing equipment standards. Acceptable evidence to certify petroleum industry loading rack meters includes a legible copy of the certificate of training issued by the national institute of standards and technology showing successful completion of the appropriate training module. Upon acceptance of an application, the commission will issue a placing in service permit to the applicant.

History: Amended effective April 1, 1992.  
General Authority: NDCC 64-02-03  
Law Implemented: NDCC 64-02-02

69-10-04-02.1. Self-certification not allowed - Exception. A registered service person may not certify the person's own standards or weighing and measuring devices, except that petroleum industry loading rack meters used in commerce may be self-certified only as follows:

1. The person doing the self-certification must be registered with the commission under section 69-10-04-02.
2. Upon testing, the device must be within the permitted tolerance.

3. An independent registered service person or weights and measures inspector doing recertification must, within ten days, report the recertification to the commission. The report must clearly identify each meter, the initial test results on the day of recertification, and the test results upon recertification.

History: Effective April 1, 1992.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-03. Revocation of certificate of registration. The commission may, for good cause after careful investigation and consideration, suspend or revoke a placing in service permit registration. This policy shall in no way preclude or does not limit the right and privilege of any qualified individual or agent person not registered with the commission to install, service, repair, or recondition a commercial weighing or measuring device.

History: Amended effective April 1, 1992.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02

69-10-04-04. Test report Report. A registered service person or service agency shall must, within ten days, send a test report on all weighing and measuring devices installed or repaired certified or recertified by the person or agency to the division commission, and shall furnish a copy of the report to the owner or operator of the device. Report forms will be furnished to registered service persons by the commission.

History: Amended effective April 1, 1992.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13





MAY 1992

69-05.2-01-02. Definitions. The definitions in North Dakota Century Code section 38-14.1-02 apply to this article and 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 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 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 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 or techniques which are currently available anywhere as determined by the commission, even if they are not in routine use.
  - d. The term includes construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities, and sedimentation pond design.
  - e. The commission 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. "Cemetery" means any area of land where human bodies are interred.
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.
10. "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.
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.

12. "Coal processing waste" means earth materials which are wasted and separated from product coal during cleaning, concentrating, or other processing or preparation of coal.
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 authorized to do business in North Dakota.
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.
15. "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.
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.
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.
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.

19. "Cooperative soil survey" means a field or other investigation that locates, describes, classifies, and interprets for use the soils in a given area. The survey must meet the national cooperative soil survey standards and is the type of survey that is made for 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 the survey is not available and a permit applicant is required to have a survey made, the map scale must be 1:20,000.
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.
22. "Developed water resources" means, for land use purposes, land used for storing water for beneficial uses such as stockponds, irrigation, wildlife habitat, fire protection, flood control, and water supply.
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.
24. "Disturbed area" means those areas that have been affected by surface coal mining and reclamation operations. 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.

25. "Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.
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.
27. "Emergency spillway" means the spillway designed to convey excess water through, over, or around a dam.
28. "Employee" means, for purposes of restrictions on 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.
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.
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.
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.
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.
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.
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.

35. "Fragile lands" means geographic areas containing natural, ecologic, scientific, paleontologic, 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.
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.
37. "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.
38. "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.
39. "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.
40. "Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.
41. "Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.
42. "Historic lands" means historic or cultural districts, places, structures, or objects, including areas containing historic, cultural, or scientific resources. Examples include

archaeological and paleontological sites, national historic landmark sites landmarks, sites places listed on or eligible for listing on the state historic sites registry or the national register of historic places, sites places having religious or cultural significance to native Americans or religious groups or sites places for which historic designation is pending.

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.
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.
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.
46. "Impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semiliquid materials.

47. "Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.
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.
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.
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.
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.
52. "Knowingly" means, with respect to individual civil penalties, that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that the act or omission constituted a violation, failure, or refusal.
53. "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.

- ~~53-~~ 54. "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.
- ~~54-~~ 55. "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.
- ~~55-~~ 56. "Monitoring" means the collection of environmental data by either continuous or periodic sampling methods.
- ~~56-~~ 57. "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.
- ~~57-~~ 58. "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.
- ~~58-~~ 59. "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.
- ~~59-~~ 60. "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.
- ~~60-~~ 61. "Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.
- ~~61-~~ 62. "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.

- ~~62.~~ 63. "Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.
64. "Owned or controlled" and "owns or controls" means any one or a combination of the relationships specified in subdivisions a and b:
- a. Being a permittee of a surface coal mining operation; based on instrument of ownership or voting securities, owning of record in excess of fifty percent of an entity; or having any other relationship which gives one person authority, directly or indirectly, to determine the manner in which an applicant, operator, or other entity conducts surface coal mining operations.
  - b. The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority, directly or indirectly, to determine the manner in which the relevant surface coal mining operation is conducted:
    - (1) Being an officer or director of an entity;
    - (2) Being the operator of a surface coal mining operation;
    - (3) Having the ability to commit the financial or real property assets or working resources of an entity;
    - (4) Being a general partner in a partnership;
    - (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten through fifty percent of the entity; or
    - (6) Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive the coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.
- ~~63.~~ 65. "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.
- ~~64.~~ 66. "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.



- ~~65-~~ 67. "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.
- ~~66-~~ 68. "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-~~ 69. "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.
- ~~68-~~ 70. "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.
- ~~69-~~ 71. "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-~~ 72. "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.
- ~~71-~~ 73. "Principal shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.
- ~~72-~~ 74. "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.

- ~~73.~~ 75. "Probable cumulative impacts" means the expected total qualitative and quantitative, direct and indirect effects of mining and reclamation activities on the hydrologic regime.
- ~~74.~~ 76. "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.
- ~~75.~~ 77. "Productivity" means the vegetative yield produced by a unit area for a unit of time.
- ~~76.~~ 78. "Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.
- ~~77.~~ 79. "Public building" means any structure that is owned by a public agency or used principally for public business, meetings, or other group gatherings.
- ~~78.~~ 80. "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.
- ~~79.~~ 81. "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.
- ~~80.~~ 82. "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.
- ~~81.~~ 83. "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.
- ~~82.~~ 84. "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.
- ~~83.~~ 85. "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.

- ~~84-~~ 86. "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.
- ~~85-~~ 87. "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-~~ 88. "Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semiliquid material.
- ~~87-~~ 89. "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-~~ 90. "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-~~ 91. "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.

92. "Road" means a surface right-of-way used, constructed, reconstructed, improved, or maintained for travel by land vehicles for use in surface coal mining and reclamation operations. The term includes access and haul roads used in surface coal mining and reclamation operations, including use by coal hauling vehicles to and from transfer, processing, or storage areas. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

~~91.~~ 93. "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.~~ 94. "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.~~ 95. "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.~~ 96. "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.

~~95-~~ 97. "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.

~~96-~~ 98. "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.

~~97-~~ 99. "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.

~~98-~~ 100. "Spoil" means overburden that has been disturbed during surface coal mining operations.

- ~~99~~. 101. "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.
- ~~100~~. 102. "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.
- ~~101~~. 103. "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.
- ~~102~~. 104. "Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.
- ~~103~~. 105. "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.
- ~~104~~. 106. "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.
- ~~105~~. 107. "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.



- ~~106~~-108. "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a forty-five hundredths micron filter.
- ~~107~~-109. "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.
- ~~108~~-110. "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~~-111. "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.
- ~~110~~-112. "Ton" means two thousand pounds avoirdupois [0.90718 metric ton].
- ~~111~~-113. "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.
- ~~112~~-114. "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.
- ~~113~~-115. "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.
- ~~114~~-116. "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.

~~++5.~~ 117. "Undeveloped rangeland" means, for purposes of alluvial valley floors, lands generally used for livestock grazing where such use is not specifically controlled and managed.

~~++6.~~ 118. "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.

~~++7.~~ 119. "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.

~~+18-~~120. "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.

121. "Violation, failure, or refusal" means, with respect to individual civil penalties:

a. A violation of a condition of a permit issued by the commission; or

b. A failure or refusal to comply with any order issued under North Dakota Century Code section 38-14.1-28, or any order incorporated in a final decision issued by the commission under North Dakota Century Code chapter 38-14.1, except an order incorporated in a decision issued under subsection 1 of North Dakota Century Code section 38-14.1-29.

~~+19-~~122. "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.

~~+20-~~123. "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.

~~+21-~~124. "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.

125. "Willfully" means, with respect to individual civil penalties, that an individual acted:

a. Either intentionally, voluntarily, or consciously; and

b. With intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.

~~+22-~~126. "Woodland" means land where the primary premining natural vegetation is trees or shrubs.

~~+23-~~127. "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; May 1, 1992.  
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 propose new rules under this article or propose amendments or repealers of any rule under this article and will hold a public hearing in accordance with the procedures of this section.
2. Any person or governmental agency may petition the commission to adopt, amend, or repeal any rule under this article. Upon receipt of the petition, the commission will determine if the petition provides a reasonable basis for proposing the issuance, amendment, or repeal of a rule.
3. If the petition has a reasonable basis, the commission will propose the rule, amendment, or repealer and hold a public hearing on the proposal.
4. The commission will publish notice of the date, time, and place of the public hearing 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 those counties. The commission will issue a notice of the public hearing which will:
  - a. Furnish a brief explanation of the purpose of the proposed rule.
  - b. Specify a location where the text of the proposed rule may be reviewed.
  - c. Advise all interested persons of the opportunity to submit written comments and to appear and testify at the hearing to offer oral testimony.
  - d. Provide the address to which written comments may be sent.
  - e. Specify the date, time, and place of the hearing.
5. The commission will publish notice of hearing ~~once not less than thirty days before the hearing date and will advise all interested persons of the opportunity to submit written comments and to appear and testify at the hearing to offer oral testimony~~ twice in the official newspapers of each county in which surface coal mining operations occur and each daily newspaper of general circulation in the state. The commission will file the notice of hearing with the legislative council. The commission will cause the first publication and the filing

with the legislative council to occur at least thirty days before the hearing.

6. The public comment period on the proposed adoption, amendment, or repeal of any rule under this article will close at the end of the public hearing, unless extended by the commission.
7. The commission will consider all written comments and oral testimony received before adoption, amendment, or repeal of any rule under this article and make a written record of its consideration.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992.

General Authority: NDCC 28-32-02, 38-14.1-03

Law Implemented: NDCC 28-32-02, 38-14.1-34, 38-14.1-41

69-05.2-04-01. Areas unsuitable for mining - Permit application review procedures.

1. The commission will review the complete permit application to determine whether the proposed operations are limited or prohibited under North Dakota Century Code section 38-14.1-07.
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 will reject the application if the 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. Applications for mining federal lands within a national forest must also be submitted to the office of surface mining reclamation and enforcement 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 operation 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 applicant proposes to relocate any public road, the commission will:

- a. Require the applicant to obtain necessary approvals of the road authority.
  - b. Provide, if not included in the road authority's approval process:
    - (1) Opportunity for a public hearing 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 at least two weeks before the hearing.
    - (3) Its written findings within thirty days after the hearing on whether the interests of the public and affected landowners will be protected.
5. 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, consenting to operations within a closer distance 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 the dwelling, a new waiver is not 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 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 coal removal areas are within five hundred feet [152.40 meters] of a farm building, documentation showing compliance with North Dakota Century Code chapter 38-18.
6. Where the 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 will transmit to the



appropriate federal, state, or local agencies a copy of the completed permit application containing:

- a. A request for agency approval or disapproval of the operations.
  - b. A notice requiring agency response within thirty days from receipt of the request.
7. A commission determination 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, is subject to review under North Dakota Century Code sections 38-14.1-30 and 38-14.1-35.

History: Effective August 1, 1980; amended effective June 1, 1986; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-04, 38-14.1-07

69-05.2-05-06. Permit applications - Coordination with requirements under other laws. The commission will, to avoid duplication, coordinate permit review and issuance with:

1. Any other applicable state permit process including, ~~at a minimum,~~ permits required under by 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, state water commission, and water resource districts (North Dakota Century Code ~~chapter~~ chapters 61-01, 61-02, 61-03, 61-04, 61-15, 61-16.1, 61-16.2, 61-31, and 61-32).
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; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-42

69-05.2-06-01. Permit applications - Identification of interests.

1. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each application must contain:
  - ~~1-~~ a. The names and addresses of the owner of record of surface and coal subsurface rights contiguous to the permit area extending one-fourth mile [402.33 meters] from the permit boundary.
  - ~~2-~~ b. The mine name and the mine safety and health administration identification number.
  - ~~3-~~ c. A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the permit area extending one-fourth mile [402.33 meters] from the permit boundary.
  - d. The name, address, telephone number, and, as applicable, social security number and employer identification number of the:
    - (1) Applicant.
    - (2) Applicant's resident agent.
    - (3) Person who will pay the abandoned mine land reclamation fee.
  - e. For each person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls", as applicable:
    - (1) The person's name, address, social security number, and employer identification number.
    - (2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in the organizational structure.
    - (3) The title of the person's position, date position was assumed, and, when submitted under subdivision e of subsection 3 of section 69-05.2-10-05, the date of departure from the position.
    - (4) Each additional name and identifying number, including employer identification number, federal or state permit number, and mine safety and health administration number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application.

- (5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.
- f. For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls", the operation's:
- (1) Name, address, identifying numbers, including employer identification number, federal or state permit number and mine safety and health administration number, the date of issuance of the mine safety and health administration number, and the regulatory authority.
- (2) Ownership or control relationship to the applicant, including percentage of ownership and location in the organizational structure.
2. After notification that the application is approved by before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subdivisions d through f of subsection 1.
3. The applicant shall submit information required by this section in any format prescribed by the office of surface mining reclamation and enforcement.
4. The submission of a social security number in subdivisions d and e of subsection 1 is voluntary.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992.

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 application must contain:

1. A statement of any current or previous coal mining permits in any state held during the five years 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 application to conduct operations in any state. The information must be listed by permit and pending application number for each.

2. The explanation required by subdivision h of subsection 1 of North Dakota Century Code section 38-14.1-14 including:
  - a. Identification number and permit issue date 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 reasons for that action.
  - c. The current status of the permit, bond, or security.
  - d. The date, location, type, and current status of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.
  
3. ~~The statement regarding each violation notice listed under subdivision g of subsection 1 of North Dakota Century Code section 38-14.1-14 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 authority, department, or agency.~~
  - ~~b. A brief description of the violation alleged.~~
  - ~~c. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by the applicant to obtain administrative or judicial review.~~
  - ~~d. The current status of the proceedings and violation notice.~~
  - ~~e. Any actions, taken by the applicant to abate the violation.~~
  - ~~f. Any final resolution of each notice.~~

A violation list as required by subdivision g of subsection 1 of North Dakota Century Code section 38-14.1-14 including violations received by any person who owns or controls the applicant.
  
4. A list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.
  
5. The lists required by subsections 3 and 4 must include, as applicable:

- a. Any identifying numbers for the operation, including the federal or state permit number and mine safety and health administration number, the date of issuance of the violation notice and mine safety and health administration number, the name of the person to whom the violation was issued, and the identity of the issuing authority, department, or agency.
  - b. A brief description of the violation alleged.
  - c. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by the applicant or by any person who owns or controls the applicant, to obtain administrative or judicial review.
  - d. The current status of the proceedings and violation notice.
  - e. Any actions taken by the applicant or by any person who owns or controls the applicant to abate the violation.
  - f. Any final resolution of each notice.
6. After notification that the application is approved but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections 3 through 5.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-05. Permit applications - Permit area - Geology description.

1. The description must include a general statement of the geology within the permit area down through the 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 permit area must be collected and analyzed down to and including through the deeper of either the stratum immediately below the lowest coal seam to be mined or any lower aquifer which may be adversely affected by mining. The minimum density is one drill hole per forty acres [16.19 hectares] or a comparable spacing, or as specified by the commission. Overburden samples must be taken at five-foot [1.52-meter] intervals and taken dry whenever

possible. Laboratory analyses must be made by the methods 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 must be provided:

- a. Location of subsurface water encountered.
- b. Drill hole logs with gamma ray and density logs included as verification showing the lithologic characteristics and thickness of each stratum and 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 horizons containing potential toxic-forming materials. Physical and chemical analyses of strata below the lowest coal seam to be mined must include one sample from each stratum. The analyses 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 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. Coal seam analyses including sodium, ash, British thermal unit, and sulfur content.
- e. Cross sections sufficient to show the major subsurface variations within the permit area down to through the deeper of either the stratum immediately below the lowest coal seam to be mined or any lower aquifer which may be adversely affected by mining. The horizontal scale shall must be 1:4,800 and the vertical scale one inch [2.54 centimeters] equals twenty feet [6.10 meters]. To assess pit suitability for disposal of refuse, ash, and other residue from coal utilization processes, the information presented in this subsection must extend to a depth



determined by the commission or to the base of the next confining clay stratum beneath the lowest coal seam to be mined.

- f. A thickness (isopach) map of the overburden to the top of the deepest seam to be mined. The contour interval must be ten feet [3.05 meters] and the horizontal scale 1:4,800.
  - g. All coal crop lines and the strike and dip of the coal to be mined.
3. If required by the commission, the applicant shall collect and analyze test borings or core samplings to greater depths within or outside the permit area if needed for evaluating the impact of mining on the hydrologic balance.

History: Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-09. Permit applications - Permit area - Prime farmland - Reconnaissance investigation.

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, unless the applicant presents other information which demonstrates to the satisfaction of the state conservationist of the United States soil conservation service that no prime farmland mapping units are present.
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; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-08-15. Permit applications - Permit area - Fish and wildlife resources. Each application must include fish and wildlife resource information for the permit and adjacent area.

- ~~1. Each application must contain a description of fish and wildlife resources and their habitats on the permit and adjacent areas where effects on those resources may reasonably be expected. The applicant shall base the description on fish and wildlife inventories and delineate habitats on 1:4,800 scale aerial photographs.~~
- ~~2. The applicant shall determine the scope of work, level of detail, and timetable for completing fish and wildlife inventories in consultation with the commission and the state game and fish department and submit a study plan for commission approval for acquiring fish and wildlife information.~~
1. The applicant shall submit for commission approval a study plan for acquiring fish and wildlife information which must include the scope of work, level of detail, and timetable for completing fish and wildlife inventories. The commission, in consultation with the state and federal agencies responsible for fish and wildlife, will ensure that the study plan is sufficient to design the protection and enhancement plan required in section 69-05.2-09-17.
2. The study report must be included in the application and fish and wildlife habitats must be delineated on 1:4,800 scale aerial photographs.
3. Site-specific resource information necessary to address the respective species or habitats is required when the permit or adjacent area is likely to include:

- a. Listed or proposed endangered or threatened plant or animal species or their critical habitats listed by the secretary of the United States department of the interior under the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 seq.];
  - b. Habitats of unusually high value for fish and wildlife such as important streams, wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, migration routes, or reproduction and wintering areas; or
  - c. Other species or habitats identified through agency consultation as requiring special protection under state or federal law.
4. Within ten days of the request, the commission will provide the resource information required under subsection 1 to the United States department of the interior, fish and wildlife service regional or field office for their review.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992.

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 application must contain a detailed description of the proposed mining operations, including:

1. A narrative of mining procedures and engineering techniques, anticipated annual and total coal production, and major equipment.
2. A plan stating the anticipated or actual starting and termination date of each phase of mining activities and the amount of land to be affected for each phase over the life of the permit.
3. A narrative for each operations plan 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.
4. A plan for each support facility to be constructed, used, or maintained within the permit area including maps, appropriate cross sections, design drawings, and specifications of each facility sufficient to demonstrate compliance with section 69-05.2-24-09.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.

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.

1. Each application must contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained. Appropriate maps, descriptions, profiles, and cross sections must be included to show:
  - ~~1.~~ a. Road locations Locations.
  - ~~2.~~ b. Specifications for each road width, gradient, surface surfacing material, cut, fill embankment, culvert, bridge, drainage ditch, low-water crossing, and drainage structure to meet the design requirements in chapter 69-05.2-24.
  - ~~3.~~ c. Specifications for stabilization and erosion prevention for Plans for stabilizing road cut and fill embankments, ditches, drains, and other side slopes.
  - ~~4.~~ d. Results of appropriate geotechnical analysis, where commission approval is required for alternative specifications, or for steep cut slopes under section 69-05.2-24-03. Specifications for each road to be located in the channel of an intermittent or perennial stream under subsection 4 of section 69-05.2-24-01.
  - e. Specifications for each ford of intermittent or perennial streams to be used as a temporary route under subsection 4 of section 69-05.2-24-03.
  - ~~5.~~ f. Measures to obtain commission approval for altering or relocating a natural drainageway under subdivision e of subsection 5 of section 69-05.2-24-04 69-05.2-24-03.
  - g. Specifications for each low-water crossing of intermittent or perennial streams to provide maximum protection of the stream under subdivision f of subsection 5 of section 69-05.2-24-03.
  - h. Plans to remove and reclaim each road not retained under the proposed postmining land use, and a schedule for removal and reclamation.
- ~~6.~~ A general operations description of each road, conveyor, or rail system to be constructed, used, or maintained.

2. The plans and drawings of each primary road must be prepared by, or under the direction of and certified by, a qualified registered professional engineer with experience in the design and construction of roads. The certification must state that the plans and drawings meet the requirements of this article, current and prudent engineering practices, and any design criteria established by the commission.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.

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 application must include a surface water management plan describing each water management structure intended to meet the requirements of chapter 69-05.2-16. Each plan must:
  - a. Delineate the watershed boundaries within the permit and adjacent areas.
  - b. Identify by watershed and delineate each mining activity along with an estimate of the affected area associated with each disturbance type.
  - c. Identify the locations of ponds or water impoundments, whether temporary or permanent, and include a plan containing:
    - (1) The purpose of the structure.
    - (2) The name and size in acres [hectares] of the watershed affecting the structure.
    - (3) The runoff and peak discharge rates attributable to the storm or storms for which the structure is designed, including supporting calculations. The plan should specify baseflow if appropriate.
    - (4) The estimated sediment yield of the contributing watershed, calculated according to subsection 2 of section 69-05.2-16-09, and sediment storage capacity of the structure.
    - (5) Proposed structure operations and maintenance.
    - (6) Preliminary plan view and cross section of the structure, to an appropriate scale, including anticipated spillway types and relative locations.

- (7) 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 certificate and schedule of dates that detailed design plans, as required in subsection 2, will be submitted to the commission, provided that:
- (a) Detailed design plans for structures scheduled for construction within the first year of the permit term must be submitted with the application.
  - (b) Detailed design plans for a structure must be approved by the commission prior to construction.
- ~~(10)~~ (8) Other preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure.
- d. Identify the location of all proposed diversions along with detailed design specifications, including maps, cross sections, and longitudinal profiles which illustrate existing ground surface and proposed grade of all stream channel diversions and other diversions to be constructed within the permit area to achieve compliance with sections 69-05.2-16-06 and 69-05.2-16-07.
  - e. Include a schedule of the approximate construction dates for each structure and, if appropriate, a timetable and plans to remove each structure.
  - f. Identify the location of proposed temporary coal processing waste disposal areas, along with design specifications to meet the requirements in section 69-05.2-19-03.
  - g. Identify the location of proposed coal processing waste dams and embankments along with design specifications to meet the requirements in chapter 69-05.2-20. The plan must include the results of a geotechnical investigation of each proposed coal dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment and the impounded material. The geotechnical investigation must be planned and supervised by an engineer or engineering geologist, as follows:
    - (1) Determine the number, location, and depth of borings and test pits using current prudent engineering



practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

- (2) Consider the character of the overburden, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site.
  - (3) Identify springs, seepage, and ground water flow observed or anticipated during wet periods in the proposed dam or embankment area.
  - (4) Consider the possibility of mudflows or other landslides into the dam, embankment, or impounded material.
- h. Include a statement that the plan has been prepared by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor experienced in the design of impoundments. The plans must be certified as meeting the requirements of this article using current, prudent engineering practices and any design requirements established by the commission.
2. The application must contain detailed design plans for each structure identified in subdivision c of subsection 1. These plans must:
- a. Meet all applicable requirements of sections 69-05.2-16-08, 69-05.2-16-09, 69-05.2-16-10, and 69-05.2-16-12.
  - b. Provide, at an appropriate scale, detailed dimensional drawings of the impounding structure including a plan view and cross sections of the length and width of the impounding structure, showing all zones, foundation improvements, drainage provisions, spillways, outlets, instrument locations, and slope protection. The plans must also show the measurement of the minimum vertical distance between the crest of the impounding structure and the reservoir surface at present and under design storm conditions, sediment or slurry level, water level, and other pertinent information.
  - c. Include graphs showing elevation - area - capacity curves to the top of the embankment.
  - d. Describe the spillway features and ~~capacities~~ include stage discharge curves and calculations used in their determination.

- e. Include the computed minimum safety factor range for the slope stability of each impounding structure which meets or exceeds the ~~size~~ criteria of subsection 17 of section 69-05.2-16-09.
- f. Demonstrate that detention time criteria of section 69-05.2-16-09 can be met, if applicable.
- g. Describe any geotechnical investigations, design, and construction requirements of the structure including compaction procedures and testing.
- h. ~~Describe the maintenance and operation requirements of each structure.~~
- i. ~~Describe the timetable and plans to remove each structure, if appropriate.~~
- j. Include additional information as necessary to enable the commission to completely evaluate the structure.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-09-17. Permit applications - Operation and reclamation plans - Fish and wildlife resources protection and enhancement plan.

- ~~1. Each application must contain a fish and wildlife management plan for the permit and adjacent areas where impacts could reasonably be expected. The plan must describe the mining and reclamation procedures to be used to comply with section 69-05.2-13-08.~~
- ~~2. If impacts are expected, each application must contain a plan to monitor selected indicator species to assess surface mining effects on fish and wildlife resources. The applicant shall consult with the commission and the state game and fish department before selecting the indicator species.~~
- 1. Each application must include a plan of how, to the extent possible using the best technology currently available, the operator will minimize disturbances and adverse impacts on fish and wildlife and related environmental values, including compliance with the Endangered Species Act, during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved where practicable. The plan must:
  - a. Be consistent with the requirements of section 69-05.2-13-08.

- b. Apply, at a minimum, to species and habitats identified under section 69-05.2-08-15.
  - c. Include protective measures that will be used during active mining. The measures may include establishment of buffer zones, selective location and special design of haul roads and powerlines, and monitoring of surface water quality and quantity.
  - d. Include enhancement measures that will be used during the reclamation phase to develop aquatic and terrestrial habitat. The measures may include restoration of streams and other wetlands, retention of ponds and impoundments, establishment of vegetation for wildlife food and cover, and replacement of perches and nest boxes. If the plan does not include enhancement measures, a statement must be given explaining why enhancement is not practicable.
  - e. Include monitoring of selected indicator species to assess surface mining effects on fish and wildlife resources. The applicant shall consult with the commission and state game and fish department before selecting the indicator species.
2. Within ten days of the request, the commission will provide the plan to the United States department of the interior, fish and wildlife service regional or field office for their review.
  3. The applicant shall report management plan results and data derived from the monitoring plan for the calendar year to the commission by each February fifteenth.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992.

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 in connection with a coal mine but outside the permit area of any for a specific mine, other than plants 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 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 according to the requirements of section 69-05.2-13-13.

History: Effective January 1, 1987; amended effective May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.2-03

Law Implemented: NDCC 38-14.1-14

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 applicant is in violation of any law or rule of this state, or of any law or rule in any state enacted under federal law, rule, or regulation pertaining to air or water environmental protection or surface coal mining and reclamation, the commission will require the applicant, before the issuance of the permit, to:
  - a. Submit proof satisfactory to the regulatory authority with jurisdiction over the violation, that the violation:
    - (1) Has been corrected; or
    - (2) Is being corrected; or
  - b. Establish that 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 operations being conducted under a permit issued under this section shall immediately cease, until the provisions of subdivision a are satisfied.
2. Before any final determination that the 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 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 applicant or operator shall be given an opportunity for an adjudicatory hearing on the determination under North Dakota Century Code section ~~38-14.1-30~~.

1. The commission will not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of North Dakota Century Code chapter 38-14.1 or if any of the following are outstanding:
  - a. Delinquent civil penalties under North Dakota Century Code section 38-14.1-32.
  - b. Bond forfeitures where violations upon which the forfeitures were based have not been corrected.
  - c. Delinquent abandoned mine reclamation fees.
  - d. Unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining and reclamation operation.
  - e. Unresolved federal and state failure-to-abate cessation orders.
  - f. Unresolved imminent harm cessation orders.
2. If a current violation exists, the commission will require the applicant or person who owns or controls the applicant, before the permit is issued, to:
  - a. Submit proof that the violation has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation; or
  - b. Establish that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, 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 authority either denies a stay applied for in the appeal or affirms the violation, then any operations being conducted under a permit issued under this section must immediately cease, until the provisions of subdivision a are satisfied.

3. Any permit issued on the basis of proof submitted under subdivision a of subsection 2 that a violation is being corrected, or pending the outcome of an appeal under subdivision b of subsection 2, will be conditionally issued.
4. The commission will not issue a permit if it makes a finding that the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of North Dakota Century Code chapter 38-14.1 of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with that chapter. The applicant, anyone who owns or controls the applicant, or the operator must be given an opportunity for an adjudicatory hearing on the determination under North Dakota Century Code section 38-14.1-30.
5. After an application is approved, but before the permit is issued, the commission will reconsider its decision to approve the application, based on the compliance review required by subsection 1, in light of any new information submitted under subsection 2 of section 69-05.2-06-01 and subsection 6 of section 69-05.2-06-02.
- ~~3-~~ 6. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit or significant revision will be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that:
  - a. The permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or the area has met the application review procedures of section 69-05.2-04-01.
  - b. For alluvial valley floors:
    - (1) The applicant has obtained either a negative determination; or
    - (2) If the permit area or adjacent area contains an alluvial valley floor:
      - (a) The operations would be conducted according to chapter 69-05.2-25 and all applicable requirements of North Dakota Century Code chapter 38-14.1.
      - (b) Any change in the use of the lands covered by the 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.

- (3) The significance of the impact of the 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.
- (4) Criteria for determining whether a mining operation will materially damage the quantity or quality of waters include:
  - (a) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor to levels above the threshold value at which crop yields decrease, based on crop salt tolerance research studies approved by the commission, unless the applicant demonstrates compliance with subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21.
  - (b) The increases in subparagraph a will not be allowed unless the applicant demonstrates, through testing related to local crop production that the operations will not decrease crop yields.
  - (c) For types of vegetation specified by the commission and not listed in approved crop tolerance research studies, a consideration must be made of any observed correlation between total dissolved solids concentrations in water and crop yield declines.
  - (d) Potential increases in the average depth to water saturated zones (during the growing season) within the root zone 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.

- (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 boundaries based on enhancement of the farm's agricultural productivity not related to 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 applicant has, with respect to prime farmland, obtained either a negative determination or if the permit area contains prime farmlands:
- (1) The postmining land use will be cropland.
  - (2) The permit specifically incorporates the plan submitted under section 69-05.2-09-15 after consideration of any revisions suggested by the United States soil conservation service.
  - (3) The operations will be conducted in compliance with chapter 69-05.2-26 and other standards required by this article and North Dakota Century Code chapter 38-14.1.
- d. The 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 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.

- ← 7. The commission may make necessary changes in the permit to avoid adverse effects on finding that operations may adversely affect any publicly owned park or places included on the state historic sites registry or the national register of historic places. Operations that may adversely affect those parks or historic sites will not be approved unless the federal, state, or local governmental agency with jurisdiction over the park or site agrees, in writing, that mining may be allowed.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-33

69-05.2-10-05. Permit applications - Approval or denial actions. The commission will approve, require modification of, or deny all applications for permits according to the following:

1. The commission 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 under North Dakota Century Code section 38-14.1-19, the commission will approve, require modification of, or deny all permit applications within the review period specified in section 69-05.2-05-01.
3. If an application is approved, the permit will contain the following conditions:
  - a. The permittee shall minimize adverse ~~impact~~ impacts to the environment or public health and safety resulting from noncompliance with any term or condition, including:
    - (1) 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.
    - (3) Warning, as soon as possible after learning of noncompliance, any person whose health and safety is in imminent danger.

- b. The permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the treatment or control of waters or atmospheric emissions as required by North Dakota Century Code chapter 38-14.1, this article, and any other applicable law.
  - c. The permittee shall conduct operations:
    - (1) To prevent significant, imminent environmental harm to public health or safety; and
    - (2) Utilizing methods specified in the permit if the commission approves alternative methods of compliance with the performance standards of North Dakota Century Code section 38-14.1-24 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.
  - e. Within thirty days after a cessation order is issued under North Dakota Century Code section 38-14.1-28, except where a stay of the cessation order is granted and remains in effect, the permittee shall either submit the following information, current to the date the cessation order was issued, or notify the commission in writing that there has been no change since the last submittal:
    - (1) Any new information needed to correct or update the information previously submitted under subdivision e of subsection 1 of section 69-05.2-06-01; or
    - (2) If not previously submitted, the information required from a permit applicant by subdivision e of subsection 1 of section 69-05.2-06-01.
4. When the application is approved, the commission will publish notice in the official county newspapers and in daily newspapers of general circulation in the area of the proposed operations. The publication 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 and may request temporary relief from permit issuance within thirty days of the publication of the notice.
5. At the time of publication of the decision required by subsection 4, the commission will:
- a. Provide copies of all findings, decisions, and orders on an application to:

- (1) Each person and government official who filed a written objection or comment.
  - (2) Each reclamation advisory committee member.
  - (3) The office of surface mining reclamation and enforcement, together with a copy of the approved application materials.
- b. Notify the appropriate government officials in the relevant county 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; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-03, 38-14.1-21

69-05.2-11-02. Permit revisions.

1. A permit revision is required:
  - a. For changes from mining or reclamation methods approved in the permit.
  - b. For new operations not specified and approved in the existing permit.
  - c. When a new coal removal subarea of the existing permit area is proposed to be disturbed in accordance with the timing and sequence approved in the permit. The revision is considered a significant alteration to the mining and reclamation plan.
  - d. For acreage changes proposed to add or delete lands to or from an existing permit area under subsection 2 or 6.
  - e. When required under section 69-05.2-11-01.
  - f. In order to continue operation after the cancellation or material reduction of the liability insurance policy, performance bond, or other equivalent guarantee upon which the original permit was issued.
  - g. When an extension is requested under subsection 3 of North Dakota Century Code section 38-14.1-12.
2. A permittee may request additional acreage [hectarage] if the commission considers the addition an incidental boundary change to the original permit area. This acreage [hectarage] will have the same term as the original permit.

3. Revision applications must be filed and approved before the date the permittee expects to change operations or initiate operations not previously approved.
4. A revision application must include:
  - a. A narrative describing the proposed revision.
  - b. Appropriate maps and legal descriptions, cross sections, graphs, construction details, procedures, revised reclamation plans, and other data which affirmatively demonstrate compliance with the applicable provisions of North Dakota Century Code sections 38-14.1-14, 38-14.1-16, and 38-14.1-24 and this article.
5. The commission will review and issue a decision on each revision application according to the following:
  - a. The commission will determine on the basis of the existing permit and the environmental resources of the permit area whether the proposed revision is a significant alteration or addition to the approved operations and reclamation plan. If the proposed revision is significant, the commission will notify the permittee in writing. The application is subject to the notice, hearing, and procedural requirements of chapter 69-05.2-10 and North Dakota Century Code sections 38-14.1-18, 38-14.1-19, and 38-14.1-20. Insignificant revisions are not subject to these notice, hearing, and procedural requirements.
  - b. The commission will distribute copies of the application and supporting materials to the appropriate members of the advisory committee. Committee members shall forward their evaluation to the commission within twenty days of receipt.
  - c. The commission will issue a decision on each significant application in accordance with the time periods and procedures in section 69-05.2-05-01. The director of the commission's reclamation division will issue a decision on insignificant applications as soon as practicable.
  - d. No revision will be approved unless the permittee affirmatively demonstrates and written findings are made that all of the permit approval standards of subsection 3 of section 69-05.2-10-03, section 69-05.2-10-04, and subsection 3 of North Dakota Century Code section 38-14.1-21 are met.
6. A permittee may file an application to withdraw any lands previously approved as a part of a permit area, except lands on which operations have commenced. The permittee shall demonstrate and certify that the proposed acreage [hectarage]



to be deleted has not been affected by mining activities. Applications to delete undisturbed acreage [hectarage] are not subject to the public notice, procedural, and approval or denial standards of chapter 69-05.2-10 and North Dakota Century Code chapter 38-14.1.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992.

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 is available only for lands within permit boundaries and for incidental boundary changes approved under section 69-05.2-11-02. ~~Permit areas released from all bond will not be renewed.~~
2. Obligations established under a surface coal mining and reclamation operations permit continue until completion of all operations, regardless of whether the authorization to conduct surface coal mining operations has expired or has been terminated, revoked, or suspended.
3. A permittee need not renew a permit for surface coal mining and reclamation operations if no surface coal mining operations remain to be conducted and only reclamation remains to be done.
4. Permits for areas released from all bond will not be renewed.
- ~~2-~~ 5. Renewal applications must be in a form required by the commission, and include:
  - a. 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 original permit application or prior renewal.
  - b. The reasons for requesting renewal.
  - c. A copy of the text of the newspaper notice prepared according to requirements in subsection 3. The applicant shall furnish proof of publication to the commission after the last required publication date.
  - d. Evidence that adequate liability insurance will be provided for the proposed renewal period.
  - e. Evidence that bond is sufficient and will continue in full force for the proposed renewal period.

- ~~3-~~ 6. Complete renewal applications are subject to the public notification 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; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC ~~38-14.1-22~~ 38-14.1-23

69-05.2-12-01. Performance bond - General requirements.

1. Permit applicants shall submit an estimate of bond for the entire permit area or that area specified in subsection 5.
2. The commission shall review the estimated bond amount, approve or modify the required amount and notify the applicant.
3. Liability on the bond shall cover all surface coal mining and reclamation operations to be conducted within the legally described area attached to the bond.
4. ~~The applicant may file either:~~
  - a. ~~The entire bond for the permit term; or~~
  - b. ~~An incremental bond schedule and bond required for the first scheduled increment.~~

The applicant may file either the entire bond for the permit term or an incremental bond schedule and bond required for the first scheduled increment. Increments must be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary under section 69-05.2-12-18.

5. When the permittee elects to increment the amount of the bond, the permittee shall:
  - a. Furnish a legal description of each incremental area.
  - b. Furnish a schedule when each increment will require bond.
  - c. Furnish with the application the estimated costs for the commission to complete the reclamation plan for the initial increment.
  - d. Provide the estimated cost to complete the reclamation plan for the next increment at least ninety days prior to the expected starting date of mining.

6. The permittee will be notified of the commission's bond determination within thirty days of receipt of the permittee's reclamation cost estimate for the next bond increment.
7. The permittee shall not disturb any areas within the bond area prior to commission approval of the entire bond or incremental bond covering the area to be affected.
8. Once surface coal mining operations have begun within the bond area, adequate bond coverage must be in effect at all times. Except as provided by subsection 3 of section 69-05.2-12-03, operating without a bond is a violation of a permit condition.
9. The indemnity agreement for a collateral bond or self-bond must be executed according to the following:
  - a. If a corporation or rural electric cooperative:
    - (1) By two officers authorized to sign the agreement by a resolution of the board of directors, a copy of which must be provided; and
    - (2) To the extent the history or assets of a parent organization are relied upon to make the required showings for a collateral bond or self-bond, by every parent organization at any tier.
  - b. If a partnership, each general partner and each parent organization or principal investor. "Principal investor" or "parent organization" means anyone with a ten percent or more beneficial ownership interest, directly or indirectly, in the applicant.
  - c. If married, the permit applicant's spouse, if directly involved as part of the business on a regular basis or as an officer of the organization.
10. The name of each person who signs the indemnity agreement must be typed or printed beneath the signature. ~~Any person who occupies more than one of the positions shall indicate each capacity in which that person signs the agreement.~~ The agreement is binding jointly and severally on all who execute it.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16

69-05.2-12-12. Release of performance bond - Bond release application.

1. The permittee may request the commission release all or part of a bond for lands disturbed after July 1, 1975, as follows:
  - a. For lands disturbed between July 1, 1975, and June 30, 1979, the application shall comply with subsection 1 of North Dakota Century Code section 38-14.1-17 and subsections 3 and 4 of this section. The criteria for release of all or part of the bond shall be according to the reclamation requirements in effect at the time of the disturbance.
  - b. For lands disturbed after June 30, 1979, the application shall comply with the requirements of this section and section 69-05.2-12-11.
2. The permittee may file bond release applications only at times and seasons that allow the commission to properly evaluate the completed reclamation operations.
3. Within thirty days after filing a request for bond release, the permittee shall submit proof of the publication required by North Dakota Century Code section 38-14.1-17. The advertisement published must include the permittee's name.
4. Lands for which the permittee requests bond release shall be legally described and delineated on maps of the permit area.
5. When the permittee requests a partial release of bond after regrading under subdivision a of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall, unless waived by the commission, include surface profiles or topographic maps in accordance with section 69-05.2-21-06.
6. When the permittee requests a partial release of bond after respreading suitable plant growth material under subdivision b of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall include the thickness of the respread first lift and second lift suitable plant growth materials.
7. When the permittee requests a partial release of bond after vegetation has been established under subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall include:
  - a. The data collected, analyses conducted, and a narrative demonstrating vegetation establishment as required by subsection 3 of section 69-05.2-22-07.
  - b. Documentation that the lands to which the release would be applicable are not contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 69-05.2-16-04.

- c. A discussion of how the provisions of a plan approved by the commission for the sound future management of any permanent impoundment by the permittee or landowner have been implemented.
8. When the permittee requests final bond release under subdivision d of subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall include:
    - a. The data collected, analyses conducted, and a narrative detailing compliance with subsection 4 of section 69-05.2-22-07.
    - b. The history of initial and subsequent seedings and fertilization (including mixtures and rates), appropriate soil tests, supplemental irrigation, or other management practices employed.
    - c. Documentation showing the reestablishment of essential hydrologic functions of alluvial valley floors.
  9. When the permittee requests release of bond for any combination of release stages detailed in subsection 7 of North Dakota Century Code section 38-14.1-17, the application shall contain all the information required at each bond release stage.
  10. Requests for a reduction in bond amount for reclamation work performed according to subsection 4 of section 69-05.2-12-08 must include a detailed description of the work performed and a new reclamation cost estimate.
  11. The commission may request any additional information necessary to evaluate the bond release application.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1988; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-17

69-05.2-12-18. Forfeiture of performance bond - Amount of forfeiture. If the commission requires performance bond forfeiture of a bond, the entire amount of the bond, the total amount of all bonds for the bonded area for which liability is outstanding shall must be forfeited. Any bond proceeds remaining after reclamation is completed shall will be refunded. If there is more than one bond for a bonded area, including collateral bonds and self-bonds, any proceeds remaining after reclamation work is completed will be refunded proportionately.

History: Effective August 1, 1980; amended effective May 1, 1988; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-16, 38-14.1-30

69-05.2-12-20. Liability insurance. The permittee shall submit to the commission a certificate of public liability insurance in accordance with subsection 3 of North Dakota Century Code section ~~38-14.1-14~~. Minimum coverage for bodily injury and property damage must be one million dollars for each occurrence and two million dollars aggregate.

1. The permittee shall submit to the commission a certificate of public liability insurance in accordance with subsection 3 of North Dakota Century Code section 38-14.1-14. Minimum coverage for bodily injury and property damage must be one million dollars for each occurrence and two million dollars aggregate.
2. The policy must be maintained in full force during the life of the permit or any renewal, as well as the liability period necessary to complete all reclamation operations under this article.

History: Effective August 1, 1980; amended effective June 1, 1983; March 1, 1987; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC ~~38-14.1-14~~ 38-14.1-16, 38-14.1-30

69-05.2-13-08. Performance standards - General requirements - Protection of fish, wildlife, and related environmental values.

1. The permittee shall affirmatively demonstrate how protection and enhancement of fish and wildlife resources will be achieved where practicable on the basis of information gathered and management plans developed under sections 69-05.2-08-15 and 69-05.2-09-17.
2. No surface mining activity may be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary of the United States department of the interior or which is likely to result in the destruction or adverse modification of designated critical habitats of those species in violation of the Endangered Species Act of 1973, as amended [16 U.S.C. 1531 et seq.]. The permittee shall promptly report to the commission the presence in the permit area of any state-listed or federally listed endangered or threatened species of which the permittee becomes aware. Upon notification, the commission will consult the United States fish and wildlife service, the state game and fish department, and the operator, and then decide whether, and under what conditions, the operator may proceed.



3. The permittee shall promptly report to the commission the presence in the permit area of any ~~plant or animal listed as threatened or endangered,~~ or any bald or golden eagle, or bald or golden eagle nest or eggs, of which the permittee becomes aware. 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 perform the consultation and decision process specified in subsection 2.
- ~~3-~~ 4. The permittee shall ensure that the design and construction of electric powerlines and other transmission facilities used for or incidental to activities on the permit area follow the guidelines in Environmental Criteria for Electric Transmission Systems (United States department of the interior, United States department of agriculture (1970)), or in alternative guidance manuals approved by the commission. Design and construction of distribution lines must follow REA bulletin 61-10, Powerline Contacts by Eagles and Other Large Birds, or in alternative guidance manuals approved by the commission.
- ~~4-~~ 5. The permittee shall, to the extent possible using the best technology currently available:
- a. Locate and operate haul and access roads, sedimentation ponds, diversions, stockpiles, and other structures to avoid or minimize impacts to important fish and wildlife species and their habitats and to other species protected by state or federal law.
  - b. Create no new barrier in known and important wildlife migration routes.
  - c. Fence, cover, or use other appropriate methods to exclude wildlife from ponds containing hazardous concentrations of toxic-forming materials.
  - d. Reclaim, enhance where practicable, or avoid disturbance to habitats of unusually high value for fish and wildlife.
  - e. Reclaim, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas.
  - f. Afford protection to aquatic communities by avoiding stream channels as required in section 69-05.2-16-20 or reclaiming stream channels as required in section 69-05.2-16-07.
  - g. Not use pesticides in the area during surface mining and reclamation activities, unless specified in the operation and reclamation plan or approved by the commission on a case-by-case basis.

- h. To the extent possible prevent, control, and suppress range, forest, and coal fires not approved by the commission as part of a management plan.
- i. If fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of chapter 69-05.2-22:
  - (1) Select plant species to be used on reclaimed areas, based on the following criteria:
    - (a) Their proven nutritional value for fish and wildlife.
    - (b) Their uses as cover for fish and wildlife.
    - (c) Their ability to support and enhance fish and wildlife habitat after bond release.
  - (2) Distribute plant groupings to maximize benefits to fish and wildlife. Plants should be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits for fish and wildlife.
- j. Where cropland is to be the postmining land use and where appropriate for wildlife and surface owner crop management practices, intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals. Wetlands must be preserved when feasible or recreated consistent with the reclamation plan and the postmining land use.
- k. Where the primary land use is to be residential, public service, or industrial, intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for birds and small animals, unless the greenbelts are inconsistent with the approved postmining land use.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992.

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. Conduct auger mining to maximize the utilization and conservation of coal.
2. Conduct augering operations to:

- a. Prevent subsidence to the extent technologically and economically feasible by one of the following:
    - (1) Backfilling the auger holes to assure the long-term stability of the site.
    - (2) Utilizing known technology to assure the long-term structural stability of the augered area; or
  - b. Provide for planned subsidence in a predictable and controlled manner.
3. Correct material damage caused to surface lands.
  4. ~~To the extent required under state law, either~~ Either correct material damage resulting from subsidence caused to structures or facilities by repairing the damage, or compensate the owner of the structures or facilities in the full amount of the diminution in value. Repair 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. Seal auger holes with an impervious noncombustible material as soon as practicable.
  6. Contain and treat auger hole drainage to meet water quality standards and effluent limitations of section 69-05.2-16-04.
  7. Not auger within five hundred feet [152.4 meters] of any underground mine workings, except as approved under section 69-05.2-13-06.

History: Effective September 1, 1984; amended effective June 1, 1986; May 1, 1990; May 1, 1992.

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 in connection with a coal mine but outside 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 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 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; May 1, 1992.

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 under section 69-05.2-21-06 and before the suitable plant growth material is replaced, regraded land must be scarified or otherwise treated, if

necessary, to eliminate slippage surfaces or to promote root penetration.

2. Subsoil 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 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)	(Topsoil Plus Subsoil) Average in Inches (Centimeters)
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~~ 1997.
- 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 under subsection 2 of section 69-05.2-15-02.
5. Following the respreading of suitable plant growth materials, appropriate measures 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; May 1, 1992.  
General Authority: NDCC 38-14.1-03



Law Implemented: NDCC 38-14.1-24

69-05.2-16-03. Performance standards - Hydrologic balance - Compliance with the ~~standards~~ requirements of the state engineer and water resource district. Any water impoundment, diversion, structure, or drainage ditch built as part of an approved mining and reclamation plan must be constructed to meet the requirements of the North Dakota state engineer and the appropriate water resource district, as well as those of this article. The commission will not issue or revise a mining permit until the state engineer ~~has~~ and the water resource district have had an opportunity to review the applicable information and plans. No rights under the mining permit shall be exercised until the necessary state engineer and water resource district permits are obtained.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03, 38-14.1-42

Law Implemented: NDCC 38-14.1-24, 38-14.1-42

69-05.2-16-07. 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 in section 69-05.2-16-20;
  - b. Comply with other requirements of this chapter;
  - 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, the diversion must be designed, constructed, and removed as follows:
  - a. The longitudinal profile of the stream, the channel, and the floodplain 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 may not exceed the limits established by state law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures may be used in diversions only when approved by the commission. These structures 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 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, all temporary stream channel diversions must be removed and the affected land reclaimed. At the time diversions are removed, downstream water treatment facilities previously protected by the diversion must be modified or removed to prevent overtopping or failure of the facilities. This requirement does not relieve the operator from 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; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-42

69-05.2-16-09. Performance standards - Hydrologic balance - Sedimentation ponds.

1. General requirements. Sedimentation ponds must be used individually or in series and:

- 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 must provide adequate sediment storage volume. Sediment storage volume 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 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 must be sufficient to achieve and maintain applicable effluent standards. The calculated theoretical detention time and all supporting materials must be included in the permit application.
  4. Dewatering. The stored water must be removed by a nonclogging dewatering device or a conduit spillway approved by the commission, and have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device may not be lower 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 do not relieve the operator from compliance with applicable effluent limitations.
  7. There must be no outflow through the emergency spillway from the ten-year, twenty-four-hour precipitation event or lesser events.
  8. Sediment must be removed from sedimentation ponds 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 or a single spillway must be provided to safely discharge the runoff from a twenty-five-year, 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. 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 must be obtained and velocities must be nonerodable nonerosive. Earth or grass lined spillways may be used only where sustained flows are not expected.

10. The minimum elevation at the top of the settled embankment must be one foot [30.48 centimeters] above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this minimum elevation requirement applies at all times.
11. The constructed height of the dam 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 settlement.
12. The minimum top width of the embankment 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 may not be less than 1v:5h, with neither slope steeper than 1v:2h. Slopes must be designed to be stable, even if flatter side slopes are required.
14. The foundation area 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 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 must be started at the lowest point of the foundation. The fill must be brought up in horizontal layers in the thicknesses required to facilitate compaction and meet the design requirements of this section. Compaction must be conducted as specified in the approved design.
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 meet the size and other criteria of 30 CFR 77.216, or is located where failure would be expected to cause loss of life or serious property damage, the following additional requirements must be met:

- a. An appropriate combination of principal and emergency spillways must be provided to safely discharge the runoff from a one-hundred-year, six-hour precipitation event, or a larger event as specified by the commission.
- b. The embankment must be designed and constructed with a seismic safety factor of 1.2 and a static safety factor of at least 1.5 for a normal pool with steady state seepage saturation conditions, or a higher safety factor as designated by the commission.
- c. Appropriate barriers 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 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 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 must be certified annually as having been maintained to comply with the approved plan. The certification must meet all applicable requirements of the state engineer. Impoundment inspections.

- a. A registered professional engineer, or other specialist under the direction of a registered professional engineer, shall inspect each impoundment as required under subdivision b of this subsection. The registered professional engineer and specialist must be experienced in the construction of impoundments.
- b. Inspections must be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.
- c. After each inspection the registered professional engineer shall promptly provide the commission a certified report that the impoundment has been constructed or maintained as designed and according to the approved plan and this chapter. The report must include discussion of any

appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded water, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

d. A copy of the inspection reports must be maintained at or near the minesite.

19. The embankment, including the surrounding areas and diversion ditches disturbed or created by construction, 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 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 must be repaired and revegetated according to section 69-05.2-15-06.
20. ~~All ponds, including those not~~ In addition to the requirements of subsection 18, all impoundments meeting the criteria of subsection 17, must be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications made according to 30 CFR 77.216-3. Dams not meeting the criteria of subsection 17 may Other impoundments must be examined on a semiannual basis at least semiannually by a qualified person for appearance of erosion, structural weakness, and other hazardous conditions. The annual inspection required by subsection 18 will be considered one of the examinations required by this subsection.
21. Plans for any enlargement, reduction, reconstruction, or other modification of dams or impoundments must be submitted to the commission. Commission approval of these plans is required before modification begins, unless a modification is necessary to eliminate a hazard to public health, safety, or the environment.
22. Sedimentation ponds 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 pond is removed, the affected land must be reclaimed, unless the pond has been approved by the commission for retention. If the commission approves retention, the pond 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; May 1, 1992.



General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-16-12. Performance standards - Hydrologic balance - Permanent and temporary impoundments.

1. In addition to the standards for permanent impoundments in subsection 7 of North Dakota Century Code section 38-14.1-24, the design, construction, and maintenance of structures in which water is impounded by a dam must utilize the best technology currently available and meet the requirements of subsections 9 through 21 of section 69-05.2-16-09 and the North Dakota Dam Design Handbook.
2. Temporary impoundments in which the water is impounded by a dam must meet the requirements of subsections 9 through 22 of section 69-05.2-16-09.
3. Excavations that will impound water during or after the mining operation must have stable perimeter slopes not steeper than 1v:2h. Slopes must be designed to be stable, even if flatter side slopes are required. Where surface runoff enters the impoundment area, the side slope must be protected against erosion.
4. All dams and embankments must be routinely maintained during mining operations. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways must be cleaned. Any combustible material present on the surface, other than material such as mulch or dry vegetation used for surface stability, must be removed and all other appropriate maintenance procedures followed.
5. If any examination or inspection discloses a potential hazard, the operator shall promptly inform the commission of the findings and the emergency procedures for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the commission must be notified immediately. The commission will then notify the appropriate agencies that other emergency procedures are required to protect the public.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.

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. The ground water monitoring plan must be based on the probable hydrologic consequences determination and conducted 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 must be monitored 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 must be designed and maintained to allow the commission to substantiate the determination of cumulative impacts of all surface mining activities on the ground water hydrology of the permit and adjacent 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 must be periodically monitored. Monitoring 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 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. The operator shall review the data annually or more frequently if required by the commission. Changes observed in the monitored aquifers in the permit or adjacent areas must be described and interpreted in the monitoring report as to their significance and possible effect on any water supplies. 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 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; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-27

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. The stream is diverted according to section 69-05.2-16-06 or 69-05.2-16-07; and~~
  - ~~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 must be designated a buffer zone and marked as specified in section 69-05.2-13-04.~~
1. The operator may not disturb land within one hundred feet [30.48 meters] of an intermittent or perennial stream unless the commission, after consulting the state engineer and the state department of health and consolidated laboratories, specifically authorizes surface mining activities closer to, or through, the stream, after finding that:
    - a. Surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and
    - b. If there will be a temporary or permanent stream channel diversion, it will comply with section 69-05.2-16-07.
  2. Areas not to be disturbed must be designated buffer zones and marked according to section 69-05.2-13-04.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.

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. 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] or less of explosive or blasting agent must be conducted according to

the schedule required by are subject to all requirements of this chapter except those of section 69-05.2-17-03.

3. All blasting operations must be conducted under the direction of a certified blaster. Each person responsible for blasting operations shall possess a valid certification as required by North Dakota Century Code section 38-14.1-24.
4. Blaster certificates must be carried by blasters or 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 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; May 1, 1992.  
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 must be conducted between sunrise and sunset, unless nighttime blasting is approved by the commission upon a showing by the operator that the public will be protected from adverse noise and other impacts. The commission may specify more restrictive time periods for blasting.
  - a. ~~The commission may specify more restrictive 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 prepared during the afternoon must be delayed due to an unavoidable hazardous condition and cannot be safely delayed until the next day;~~
    - (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) ~~The operator files a complete written report with the commission within three days after the night blasting. The report must include a detailed description 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 must be conducted at the scheduled times, 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 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 must be notified of the meaning of the signals through appropriate instructions. 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 must be regulated to protect the public and livestock. Access to the area 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. There are no unusual circumstances, such as imminent slides or undetonated charges; and
  - b. Access to and travel in or through the area can be safely resumed.
  
5. Airblast must be controlled so that it does not exceed the values in this subsection at any dwelling, public building, school, church, or commercial or institutional structure, unless 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.

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Lower frequency limit of measuring system, Hz (±3dB)	Maximum level in dB
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0.1 Hz or lower - flat response . .	134 peak.
2 Hz or lower - flat response . . .	133 peak.
6 Hz or lower - flat response . . .	129 peak.
C-weighted, slow response . . . . .	105 peak dBC.

- a. In all cases except the C-weighted, slow response, the measuring systems used must have a flat frequency response of at least two hundred Hz at the upper end. The C-weighted 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 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. Flyrock, including blasted material traveling along the ground, 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.
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 blasting site, in feet	Maximum allowable peak particle velocity ( $V_{max}$ ) for ground vibration, in inches/second	Scaled-distance factor to be applied without seismic monitoring ( $D_s$ )
0 to 300	1.25	50
301 to 5000	1.00	55
5001 and beyond	0.75	65

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; May 1, 1992.

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 satisfying subsection 19 of North Dakota Century Code section 38-14.1-24, the operator shall:

1. Place excess spoil from the initial pit and excess spoil not needed to meet the grading requirements of section 69-05.2-21-02 in approved designated disposal areas within a permit area. The spoil 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 effluent limitations.
  - 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. Clear all vegetative and organic materials from the disposal area and handle suitable plant growth material according to chapter 69-05.2-15. If approved by the commission, organic material may be used as mulch or included in the suitable plant growth material to control erosion, promote growth of vegetation, or increase soil moisture retention.
4. Divert surface water runoff from the area above the disposal area 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.
6. Provide slope protection to minimize surface erosion at the site. Diversion design must meet the requirements of section 69-05.2-16-06. All disturbed areas, including diversion ditches that are not riprapped, must be vegetated upon completion of construction.
7. Not direct drainage over the outslope of the disposal area without commission approval.
8. Locate the disposal area on the most naturally stable area available as approved by the commission. Where possible, fill materials suitable for disposal must be placed upon or above a natural terrace, bench, or berm if the placement provides additional stability.
9. Construct the disposal area to ensure a long-term static safety factor of 1.5.

10. Not allow depressions or impoundments on the completed disposal area.
11. Utilize terraces to control erosion and enhance stability if approved by the commission and consistent with section 69-05.2-21-02.
12. Inspect the disposal area as follows:
  - a. Each disposal area must be inspected for stability by a registered professional engineer at least quarterly throughout construction and during critical construction periods. 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 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 must be retained at the minesite.
  - ~~f. This requirement may be partially or totally waived if the commission determines that the inspections are not necessary.~~
13. Provide an underdrain system, if required by subsection 19 of North Dakota Century Code section 38-14.1-24, that is

protected by an adequate filter and designed and constructed using standard geotechnical engineering methods. Underdrains 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.

14. Ensure the foundation and abutments of the disposal area are stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing must be performed 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 must be plowed, stepped, or keyed in a manner which increases the stability of the disposal area.
15. Construct the outslope of the disposal area to not exceed 1v:2h (fifty percent) or a lesser slope required by the commission.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

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 the waste must comply with 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 must be at least three feet [91.44 centimeters].
  - b. The dam and embankment must have a minimum safety factor of 1.5 for ~~the partial~~ a normal pool with steady seepage saturation conditions, and the seismic safety factor must be at least 1.2.
  - c. The dam or embankment foundation and abutments must be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing 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.

- d. Each structure that meets the criteria of 30 CFR 77.216(a) must have sufficient spillway capacity to safely pass the probable maximum precipitation of a six-hour precipitation event, or greater event specified by the commission, when the impoundment is at high water elevation.
2. Spillways and outlet works must be designed to provide adequate protection against erosion and corrosion. Inlets must be protected against blockage.
3. ~~Dams~~ For dams or embankments constructed of or impounding waste materials ~~must be designed so that,~~ at least ninety percent of the water stored during the design precipitation event ~~will~~ must be removed within a ten-day period.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24, 38-14.1-25

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

1. Success of revegetation must be measured by using statistically valid techniques approved by the commission. Comparison of ground cover and productivity may be made on the basis of reference areas, through the use of standards in technical guides published by the United States department of agriculture, or through the use of other approved standards. If reference areas are used, the management of the reference area during the responsibility period required in subsection 2 must be comparable to that required for the approved postmining land use of the permit area. If standards are used, they must be approved by the commission and the office of surface mining reclamation and enforcement. Approved standards are 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 will begin following augmented seeding, planting, fertilization, irrigation, or other work, except for cropland and prime farmland where the period of responsibility begins at the date of initial planting of the crop being grown or a precropland mixture of grasses and legumes, and must continue for not less than ten years.
3. Vegetation establishment, for the purpose of the third stage bond release provided for in subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, will be



determined for each postmining land use according to the following procedures:

- a. For native grassland, tame pastureland, and fish and wildlife habitat where the vegetation type is grassland, ground cover on the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence. All species used in determining ground cover must be perennial species not detrimental to the approved postmining land use.
  - b. For cropland, vegetation will be considered established after the successful seeding of the crop being grown or a precropland mixture of grasses and legumes.
  - c. For prime farmland, productivity on the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence.
  - d. For woodland, shelterbelts, and fish and wildlife habitat where the vegetation type is woodland, the number of trees and shrubs must be equal to or greater than the approved standard. Understory growth must be controlled. Erosion must be adequately controlled by mulch or site characteristics.
  - e. For fish and wildlife habitat where the vegetation type is wetland, the basin must exhibit the capacity to hold water and support wetland vegetation. Ground cover of the contiguous areas must be adequate to control erosion.
4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
- a. For native grassland, the following must be achieved for the last two consecutive years of the responsibility period:
    - (1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and
    - (2) Diversity, seasonality, and permanence of the vegetation of the permit area must be equivalent to that of the approved standard.
  - b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical

confidence for the last two consecutive growing seasons of the responsibility period.

- c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for the last two consecutive growing seasons of the responsibility period.
- d. For prime farmlands, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for the last three consecutive growing seasons of the responsibility period.
- e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the last year two consecutive years of the responsibility period:
  - (1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
    - (a) Be healthy;
    - (b) Be in place for at least two growing seasons; and
    - (c) At least eighty percent of those counted must have been in place at least ~~eight growing seasons~~ six years.
  - (2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and
  - (3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.
- f. For shelterbelts, the following must be achieved during the last year two consecutive years of the responsibility period:

- (1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:
    - (a) Be healthy;
    - (b) Be in place for at least two growing seasons; and
    - (c) At least eighty percent of those counted must have been in place at least six years.
  - (2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and
  - ↔ (3) Erosion must be adequately controlled.
- g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard the ~~last~~ two consecutive years of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.
  - h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the last ~~year~~ two consecutive years of the responsibility period:
    - (1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.
    - (2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet the approved standard.
  - i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover of living plants may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission.
  - j. For areas to be developed for recreation, water areas, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover of living plants on these areas may not be less than required to control erosion.

5. Throughout the liability period the permittee shall:
  - a. Maintain any necessary fences and use proper management practices; and
  - b. Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the commission.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

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 must be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas.~~
2. The postmining land use for land that has been previously mined and not reclaimed must be judged on the basis of the land use that existed prior to any mining. However, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use must be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.
3. If the premining use of the land was changed within five years of beginning of mining, the comparison of postmining use to premining use 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; May 1, 1992.

General Authority: NDCC ~~38-14.1-03~~ 38-14.1-08, 38-14.1-24

Law Implemented: NDCC 38-14.1-24

69-05.2-24-01. Performance standards - Roads - General requirements.

1. ~~Each operator shall design, construct or reconstruct, utilize, and maintain roads and restore the area to meet the requirements of sections 69-05.2-24-02 through 69-05.2-24-07 and to control erosion and siltation, air and water pollution, and damage to public or private property.~~

~~2. All roads shall be removed and the land affected regraded and revegetated in accordance with the requirements of section 69-05.2-24-07 unless:~~

~~a. Retention of the road is approved as part of the approved postmining land use or is necessary to adequately control erosion;~~

~~b. The necessary maintenance is assured; and~~

~~c. All drainage is controlled in accordance with section 69-05.2-24-04.~~

~~3. Roads shall be certified by a qualified registered professional engineer as having been designed and constructed or reconstructed in accordance with sections 69-05.2-24-02 through 69-05.2-24-05.~~

1. Each road, as defined in subsection 92 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.

a. A primary road is any road which is:

(1) Used for transporting coal or spoil;

(2) Frequently used for access or other purposes for a period in excess of six months; or

(3) To be retained for an approved postmining land use.

b. An ancillary road is any road not classified as a primary road.

2. Each road must be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

a. Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices.

b. Control or prevent damage to fish, wildlife, or their habitat and related environmental values.

c. Control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area.

- d. Neither cause nor contribute to, directly or indirectly, the violation of state or federal water quality standards applicable to receiving waters.
  - e. Refrain from seriously altering the normal flow of water in streambeds or drainage channels.
  - f. Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the national park system, the national wildlife refuge system, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including designated study rivers, and national recreation areas designated by act of Congress.
  - g. Use nonacid-forming and nontoxic-forming substances in road surfacing.
3. The design and construction or reconstruction of roads must incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the commission.
  4. Roads must be located to minimize downstream sedimentation and flooding, but in no case may roads be located in the channel of an intermittent or perennial stream unless specifically approved by the commission under section 69-05.2-16-20, and all other applicable requirements of chapter 69-05.2-16 are met.
  5. Roads must be maintained to meet the performance standards of this chapter and any additional criteria specified by the commission.
  6. A road damaged by a catastrophic event, such as a flood or earthquake, must be repaired as soon as is practicable after the damage has occurred.

History: Effective August 1, 1980; amended effective May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-02. Performance standards - Roads - Location.

- ~~1. Roads shall be located, insofar as possible, on the most stable available areas to minimize erosion, downstream sedimentation, and flooding.~~



- 2- No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the commission.
- 3- Stream fords are prohibited unless they are specifically approved by the commission as temporary routes during periods of construction. The fords shall not adversely affect stream sedimentation or fish, wildlife, and related environmental values. All other stream crossings shall be made using bridges, culverts, or other structures designed, constructed, and maintained to meet the requirements of section ~~69-05.2-24-04~~. Repealed effective May 1, 1992.

History: Effective August 1, 1980.  
General Authority: ~~NDEC 38-14.1-03~~  
Law Implemented: ~~NDEC 38-14.1-24~~

69-05.2-24-03. Performance standards - Roads - Design and construction of primary roads. Roads that are to remain in place for more than six months shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance:

- 1- Vertical alignment. Except where lesser grades are necessary to control site specific conditions, maximum road grades shall be as follows:
  - a- The overall grade shall not exceed ~~1v.10h~~ (ten percent).
  - b- The maximum grade greater than ten percent shall not exceed ~~1v.6.5h~~ (fifteen percent) for more than three hundred consecutive feet [~~91.44~~ meters].
  - c- There shall be not more than three hundred feet [~~91.44~~ meters] of grade exceeding ten percent within any consecutive one thousand feet [~~304.80~~ meters].
- 2- Horizontal alignment. Roads shall have horizontal alignment as consistent with the existing topography as possible, and shall provide the alignment required to meet the performance standards of sections ~~69-05.2-24-01~~ through ~~69-05.2-24-07~~. The alignment shall be determined in accordance with the anticipated volume of traffic and weight and speed of vehicles to be used. Horizontal and vertical alignment shall be coordinated to ensure that one will not adversely affect the other and to ensure that the road will not cause environmental damage.
- 3- Road cuts.

- a- Cut slopes shall not be steeper than 1v-1.5h unless a detailed geotechnical analysis demonstrates that a minimum safety factor of 1.5 can be maintained. The commission may require a cut slope of less than 1v-1.5h if necessary to control erosion and ensure stability.
  - b- The cut slope shall be stabilized with respect to erosion by a vegetative cover or by other means immediately after construction is completed.
  - c- Temporary erosion control measures shall be implemented during construction to minimize sedimentation and erosion until permanent control measures can be established.
- 4- Road embankments. Embankment sections shall be constructed in accordance with the following provisions:
- a- All vegetative material and all first lift material shall be removed from the embankment foundation during construction to increase stability, and no vegetative material or first lift material shall be placed beneath or in any road embankment.
  - b- Where an embankment is to be placed on side slopes exceeding 1v-5h (twenty percent), the existing ground shall be plowed, stepped, or keyed in a manner which increases the stability of the fill. Lesser slopes shall be scarified to ensure bonding of the embankment and natural material.
  - c- Material containing by volume less than twenty-five percent of rock larger than one-half foot (15-24 centimeters) in greatest dimension shall be spread in successive uniform layers not exceeding one foot (30-48 centimeters) in thickness before compaction.
  - d- Embankment layers shall be compacted as necessary to ensure that the embankment is adequate to support the anticipated volume of traffic and weight and speed of vehicles to be used. In selecting the method to be used for placing embankment material, consideration shall be given in the design to such factors as the foundation, geological structure, soils, type of construction, and equipment to be used. A structural and foundation analysis shall be performed, as necessary, to establish design standards for embankment stability appropriate to the site. Compaction shall be conducted as specified in the design approved by the commission. Compaction effort shall be adequate to achieve the degree of compaction required as demonstrated through field testing. No lift shall be placed on a layer until the design density is achieved throughout the layer.



- e. Embankment slopes shall not be steeper than 1v:2h unless the commission specifically authorizes steeper embankments on the basis of a stability analysis. A lesser slope may be required if necessary to control erosion or ensure stability.
  - f. The minimum safety factor for all embankments shall be 1.25, or such higher factor as the commission may specify.
  - g. The road surface shall be sloped toward the ditch line at a minimum rate of one-fourth inch {6.35 millimeters} per foot {30.48 centimeters} of surface width or crowned at a minimum rate of one-fourth inch {6.35 millimeters} per foot {30.48 centimeters} of surface width as measured from the centerline of the road.
  - h. Material used in embankment construction shall be reasonably free of organic material, coal, frozen materials, wet or peat material, natural soils containing organic matter, or any other material considered unsuitable by the commission for use in embankment construction.
  - i. Excess or unsuitable material from excavations, as defined in subdivision h, shall be disposed of in the mine area in accordance with section 69-05.2-18-01. Toxic-forming material shall be disposed of in accordance with sections 69-05.2-16-10, 69-05.2-19-01, and 69-05.2-21-03.
  - j. The embankment slopes including the surrounding area disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately upon completion.
  - k. Temporary erosion control measures shall be incorporated during construction to control sedimentation and minimize erosion until permanent control measures can be established.
5. Suitable plant growth material removal. Before initiation of construction or reconstruction of a road, the first lift material, and second lift materials, if necessary to prevent contamination, shall be removed from the design roadbed, shoulders, and surfaces where associated structures will be placed, and shall be stored in accordance with section 69-05.2-15-03.

Primary roads must meet the requirements of section 69-05.2-24-01 and the additional requirements of this section.

1. The construction or reconstruction of primary roads must be certified in a report to the commission by a qualified registered professional engineer with experience in the design

and construction of roads. The report must indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

2. Each primary road embankment must have a minimum static factor of safety of 1.3.
3. To minimize erosion, a primary road must be located, insofar as is practicable, on the most stable available surface.
4. Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the commission as temporary routes during periods of road construction.
5. In accordance with the approved plan, all primary roads must:
  - a. Be constructed or reconstructed and maintained to have adequate drainage control, using structures such as bridges, ditches, cross drains, and ditch relief drains. The drainage control system must be designed to safely pass the peak runoff from a ten-year, six-hour precipitation event, or greater event as specified by the commission.
  - b. Have drainage pipes and culverts installed as designed. Both must be maintained in a free and operating condition and erosion at inlets and outlets must be prevented or controlled.
  - c. Have drainage ditches constructed and maintained to prevent uncontrolled drainage over the road surface and embankment.
  - d. Have culverts installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.
  - e. Not alter or relocate natural stream channels unless specifically approved by the commission under section 69-05.2-16-20 and all other applicable requirements of chapter 69-05.2-16 are met.
  - f. Except as provided by subsection 4, construct perennial or intermittent stream channel crossings using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. The commission will ensure that low-water crossings are designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

- g. Be surfaced with material approved by the commission as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

History: Effective August 1, 1980; amended effective May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-04. Performance standards - Roads - Drainage.

1. ~~General.~~ Each road shall be designed, constructed or reconstructed, and maintained to have adequate drainage, using structures such as, but not limited to, ditches, cross drains, and ditch relief drains. Sediment control measures shall be designed, constructed, and maintained to prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area and shall comply with the requirements of section ~~69-05.2-16-04~~.
2. For roads that are to remain in place for more than six months, the water control system shall be designed to safely pass the peak runoff from a ten-year, twenty-four-hour precipitation event or a greater event if required by the commission and shall meet the following specific design requirements:
  - a. ~~Ditches.~~ A ditch shall be provided on both sides of a through-cut and on the inside shoulder of a cut-and-fill section, with ditch relief cross drains spaced according to grade. Water shall be intercepted before reaching a large fill and drained safely away in accordance with this section. Water from a fill shall be released below the fill, through conduits or in riprapped channels, and shall not be discharged onto the fill. Drainage ditches shall be placed along sections of fill as necessary to control intercepted drainage.
  - b. ~~Culverts and bridges.~~
    - (1) Culverts with an end area of thirty-five square feet {3.25 centare} or less shall be designed to safely pass the ten-year, twenty-four-hour precipitation event without a head of water at the entrance. The culvert shall also be capable of passage of the twenty-five-year, twenty-four-hour event using available head above the inlet crown. Culverts with an end area of greater than thirty-five square feet {3.25 centare}, and bridges with spans of thirty feet {9.14 meters} or less, shall be designed to safely pass the twenty-five-year, twenty-four-hour precipitation event. Bridges with spans of more than



thirty feet {9.14 meters} shall be designed to safely pass the one hundred-year, twenty-four-hour precipitation event or a larger event as specified by the commission.

(a) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(b) Trash racks and debris basins shall be installed in the drainage area wherever debris from the drainage area could impair the functions of drainage and sediment-control structures.

(c) All culverts shall be covered by compacted fill to a minimum depth of one foot {30.48 centimeters}.

(d) Culverts shall be designed, constructed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles to be used.

3. Ditch relief culverts shall be installed according to the following:

a. Unless otherwise authorized or required under subdivisions b or c, culverts shall be spaced as follows:

(1) Spacing shall not exceed one thousand feet {304.80 meters} on grades of zero to three percent.

(2) Spacing shall not exceed eight hundred feet {243.84 meters} on grades of three to six percent.

(3) Spacing shall not exceed five hundred feet {152.40 meters} on grades of six to ten percent.

(4) Spacing shall not exceed three hundred feet {91.44 meters} on grades of ten percent or greater.

b. Culverts at closer intervals than the maximum in paragraph 1 of subdivision a shall be installed if required by the commission as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages.

c. Culverts may be constructed at greater intervals than the maximum indicated in paragraph 1 of subdivision a if authorized by the commission upon a finding that greater spacing will not increase erosion.



- d. ~~Gulverts shall cross the road at not less than a thirty degree angle downgrade.~~
  - e. ~~Gulverts may be designed to carry less than the peak runoff from a ten year, twenty four hour precipitation event if the ditch will not overtop and will remain stable.~~
  - f. ~~The inlet end shall be protected by a rock headwall or other material approved by the commission as adequate protection against erosion of the headwall. The water shall be discharged below the toe of the fill through conduits or in riprapped channels and shall not be discharged onto the fill.~~
4. ~~Natural drainage. Natural channel drainageways shall not be altered or relocated for road construction or reconstruction without the prior approval of the commission in accordance with sections 69-05.2-16-06 and 69-05.2-16-07. The commission may approve alterations and relocations only if:~~
- a. ~~The natural channel drainage is not blocked.~~
  - b. ~~No significant damage occurs to the hydrologic balance, and~~
  - c. ~~There is no adverse impact on adjoining landowners.~~
5. ~~Stream crossings. Drainage structures are required for stream channel crossings. Drainage structures shall not affect the normal flow or gradient of the stream, nor adversely affect fish migration and aquatic habitat or related environmental values. Repealed effective May 1, 1992.~~

History: ~~Effective August 1, 1980.~~  
 General Authority: ~~NBCE 38-14.1-03~~  
 Law Implemented: ~~NBCE 38-14.1-24~~

69-05.2-24-05. Performance standards - Roads - Surfacing.

- 1. ~~Roads shall be surfaced with rock, crushed gravel, or other material approved by the commission as sufficiently durable for the anticipated volume of traffic and weight and speed of vehicles to be used.~~
- 2. ~~Toxic forming substances shall not be used in road surfacing. Repealed effective May 1, 1992.~~

History: ~~Effective August 1, 1980.~~  
 General Authority: ~~NBCE 38-14.1-03~~  
 Law Implemented: ~~NBCE 38-14.1-24~~

69-05.2-24-06. Performance standards - Roads - Maintenance.

1. Roads shall be maintained in such a manner that the required or approved design standards are met throughout the life of the entire transportation facility including surface, shoulders, parking and side areas, approach structures, erosion control devices, cut and fill sections, and such traffic control devices as are necessary for safe and efficient utilization of the road.
2. Road maintenance shall include repairs to the road surface, blading, filling of potholes, and replacement of gravel. It shall include revegetating, brush removal, watering for dust control, and minor reconstruction of road segments as necessary.
3. Roads damaged by catastrophic events such as floods shall not be used until reconstruction of damaged road elements. The reconstruction shall be completed as soon as practicable after the damage has occurred. Repealed effective May 1, 1992.

History: Effective August 1, 1980.  
General Authority: NDGG 38-14.1-03  
Law Implemented: NDGG 38-14.1-24

69-05.2-24-07. Performance standards - Roads - Restoration.

1. Unless the commission approves retention of a road as suitable for the approved postmining land use, immediately after the road is no longer needed for mining and reclamation operations, reclamation, or monitoring:
  - a. The road ~~shall~~ must be closed to vehicular traffic;
  - b. The natural-drainage patterns ~~shall~~ must be restored;
  - c. All bridges and culverts ~~shall~~ must be removed;
  - d. Roadbeds ~~shall~~ must be ripped, plowed, and scarified;
  - e. Cut and fill areas ~~shall~~ must be graded in accordance with section 69-05.2-21-02;
  - f. Cross drains, dikes, and water bars ~~shall~~ must be constructed to minimize erosion; and
  - g. Terraces shall be constructed as necessary to prevent excessive erosion and to provide long-term stability in ~~cut and fill slopes, and~~
  - h. Disturbed surfaces ~~shall~~ must be covered with suitable plant growth material in accordance with section

69-05.2-15-04 and revegetated in accordance with chapter 69-05.2-22.

2. Unless otherwise authorized by the commission, all road-surfacing materials ~~shall~~ must be removed, hauled or conveyed, and disposed of under section 69-05.2-19-04.

History: Effective August 1, 1980; amended effective May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-08. Performance standards - Other transportation facilities. Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities ~~shall~~ must be designed, constructed or reconstructed, and maintained, and the area restored, to:

1. Control and minimize diminution or degradation of water quality and quantity;
2. Control and minimize erosion and siltation;
3. Control and minimize air pollution; and
4. Prevent damage to public or private property.

History: Effective August 1, 1980; amended effective May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-24-09. Performance standards - Support facilities and utility installations.

1. Support facilities required for, or used incidentally to, the operation of the mine, including, ~~but not limited to,~~ mine buildings, coal loading facilities at or near the minesite, coal storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, ~~shall~~ must be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property.
2. All surface mining activities ~~shall~~ must be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the commission.

History: Effective August 1, 1980; amended effective May 1, 1992.  
General Authority: NDCC 38-14.1-03  
Law Implemented: NDCC 38-14.1-24

69-05.2-25-03. Performance standards - Alluvial valley floors - Monitoring.

1. An environmental monitoring system must be installed, maintained, and operated by the permittee on all alluvial valley floors during operations and continued until all bonds are released. The monitoring system must provide sufficient information to allow the commission to determine that:
  - a. The agricultural utility and production of the alluvial valley floor not within the affected area is 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.
  - d. The important characteristics supporting the essential hydrologic functions of an alluvial valley floor in areas not affected are preserved during and after mining.
2. Monitoring must be performed at ~~adequate~~ frequencies adequate to indicate long-term trends that could affect agricultural use of the alluvial valley floors.
3. Monitoring must be performed during operations to identify characteristics of the alluvial valley floor not identified in the permit application and to evaluate the importance of all characteristics.
4. All monitoring data and analyses must be submitted to the commission according to the timetable approved in the permit application. Hydrologic monitoring and reporting ~~shall~~ must comply with sections 69-05.2-16-05 and 69-05.2-16-14.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC ~~38-14.1-21~~, 38-14.1-24, ~~38-14.1-27~~ 38-14.1-42

69-05.2-26-05. Performance standards - Prime farmland - Revegetation and restoration of productivity. The following



revegetation requirements 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. All 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 must be met.
2. Measurement of success in prime farmland revegetation will be determined in accordance with section 69-05.2-22-07.
3. Prime farmland productivity must be restored in accordance with the following:
  - a. Measurement of productivity must be initiated within ten years after completion of soil replacement.
  - b. Productivity must be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the crop determined under subdivision f. The permittee shall use a statistically valid sampling technique approved by the commission. Approved techniques are found in the commission's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.
  - c. The measurement period for determining crop production is specified in subdivision d of subsection 4 of section 69-05.2-22-07.
  - d. The level of management applied during the measurement period must be the same as that used on nonmined prime farmland in the surrounding area.
  - e. Restoration of prime farmland productivity will be considered achieved when the yield equals or exceeds that of the crop established on nonmined prime farmland soils in the surrounding areas for three consecutive growing seasons. The soil series, texture, and slope of the nonmined prime farmlands must be the same or similar to the prime farmlands that were mined and management practices must be equivalent.
  - f. The crop on which restoration of productivity is proven must be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth must be used as one of the crops.

g. Crop yields for the same or similar nonmined prime farmland soils during a given crop season must be determined by methods contained in Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessment or other methods approved by the commission and the office of surface mining reclamation and enforcement.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-24

69-05.2-28-03. Inspection and enforcement - Cessation order - Affirmative relief - Modification - Vacation - Termination - Notice to owners and controllers.

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 as quickly as possible, the commission or its authorized representative will impose affirmative obligations on the operator or permittee to abate the condition, practice, or violation. The cessation order will specify the timetable for abatement and any interim steps. The cessation order may also require the use of existing or additional personnel and equipment.
2. Reclamation operations and related activities must continue while a cessation order 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 failure to abate was not caused by lack of diligence by the permittee or operator.
4. The commission or its authorized representative will terminate a cessation order by written notice when all conditions, practices, or violations listed in the order are abated.
5. Termination of a cessation order does not affect the commission's right to assess civil penalties for the violation, condition, or practice for which the 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.

7. Within sixty days after issuing a cessation order, the commission will notify in writing any person identified under subsection 3 of section 69-05.2-10-05 and subdivisions e and f of subsection 1 of section 69-05.2-06-01 as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

History: Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-28

69-05.2-28-16. Inspection and enforcement - Individual civil penalty - Notice. Where appropriate, the commission may assess an individual civil penalty under subsection 6 of North Dakota Century Code section 38-14.1-32. The commission will serve notice, consistent with rule 4 of the North Dakota Rules of Civil Procedure for service of a summons and complaint, on each person to be assessed an individual civil penalty. The notice will include an explanation of the reasons for the penalty, the amount to be assessed, a copy of any underlying notice of violation and cessation order, and an opportunity for formal hearing under North Dakota Century Code section 38-14.1-30.

History: Effective May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-32

69-05.2-28-17. Inspection and enforcement - Individual civil penalty - Opportunity for review. The notice of proposed individual civil penalty assessment issued by the commission will become final thirty days after service unless:

1. The individual requests a formal hearing under North Dakota Century Code section 38-14.1-30; or
2. The commission and the individual or responsible corporate permittee agree within thirty days to a schedule or plan for the abatement or correction of the violation, failure, or refusal.

History: Effective May 1, 1992.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-32

69-05.2-28-18. Inspection and enforcement - Individual civil penalty - Payment.

1. If a notice of proposed individual civil penalty assessment becomes final in the absence of a request for formal hearing or abatement agreement, the penalty is due upon issuance of the final order.
2. If an individual named in a notice of proposed individual civil penalty assessment requests a formal hearing under North Dakota Century Code section 38-14.1-30, the penalty is due upon a final order affirming, increasing, or decreasing the proposed penalty.
3. Where the commission and corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in the notice may postpone payment until receiving either a final order or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

History: Effective May 1, 1992.  
General Authority: NDCC 38-14.1-03  
Law Implemented: NDCC 38-14.1-32



TITLE 70  
Real Estate Commission



APRIL 1992

70-02-01-15. Trust account requirements - Handling of funds - Records.

1. All moneys belonging to others and accepted by the broker while acting in the capacity as a broker shall be deposited in ~~a federally insured~~ an authorized financial institution in this state in an account separate from money belonging to the broker. Clients' funds shall be retained in the depository until the transaction involved is consummated or terminated, at which time the broker shall account for the full amounts received.
  - a. Definitions. The term "authorized financial institution" means a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in this state and insured by the federal deposit insurance corporation, the national credit union share insurance fund, or the federal savings and loan insurance corporation.
  - b. Name of account. The name of such separate account shall be identified by the words "trust account" or "escrow account".
  - ~~b.~~ c. Notification. Each broker shall notify the commission of the name of the institution in which the trust account or accounts are maintained and also the name of the accounts on forms provided therefore. A trust account card shall be filed with the commission by each new applicant for a real estate broker's license. A new form shall be filed with the commission each time a broker changes the real estate trust account in any manner whatsoever including, but not limited to, change of depository, change of



account number, change of business name, or change of method of doing business. The form shall be filed with the commission within ten days after the aforementioned change takes place.

- ~~c.~~ d. Authorization. Each broker shall authorize the commission to examine and audit the trust account and shall complete an authorization form attesting to the trust account and consenting to the examination and audit of the account by a duly authorized representative of the commission.
- ~~d.~~ e. Commingling prohibited. Each broker shall only deposit trust funds received on real estate transactions in the broker's trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed one hundred dollars in the account from the broker's personal funds which sum shall be specifically identified and deposited to cover service charges relating to the trust account.
- ~~e.~~ f. Number of accounts. A broker may maintain more than one trust account provided the commission is advised of the account.
- ~~f.~~ g. Time of deposit. Each broker shall deposit all real estate trust money received by the broker or the broker's salesperson in the trust account within twenty-four hours of receipt of the money by the broker or the salesperson unless otherwise provided in the purchase contract. In the event the trust money is received on a day prior to a holiday or other day the depository is closed, the money shall then be deposited on the next business day of the depository.
- ~~g.~~ h. Responsibility. When a broker is registered in the office of the real estate commission as in the employ of another broker, the responsibility for the maintenance of a separate account shall be the responsibility of the employing broker.
- ~~h.~~ i. Interest-bearing accounts. ~~Trust deposits may also be made in an~~ All trust accounts must be interest-bearing account in a federally insured bank, trust company, savings and loan association, or credit union, if and the interest earned must be disbursed only as provided by law, unless all persons having an interest in the funds have so otherwise agreed to the deposit in writing and a copy of the agreement is maintained by the broker for inspection by the commission. All requirements of this section with respect to trust accounts, including but not limited to identification of the account, authorization to audit, prohibition of commingling, time within which funds must

be deposited and responsibility of the broker for the deposit shall apply to interest-bearing accounts; provided, that it shall not be necessary that trust account cards be filed with the commission for each interest-bearing deposit or when such account is terminated or redeposited. All records relating to the interest-bearing deposit shall be maintained on file by the broker and open to inspection by the commission for examination and audit.

2. Brokers are responsible at all times for deposits and earnest money accepted by them or their salespersons.
  - a. Personal payments. No payments of personal indebtedness of the broker shall be made from the separate account other than a withdrawal of earned commissions payable to the broker or withdrawals made on behalf of the beneficiaries of the separate account.
  - b. Withdrawals. Money held in the separate account which is due and payable to the broker should be withdrawn promptly.
  - c. Earnest money. A broker shall not be entitled to any part of the earnest money or other moneys paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated. The earnest money contract shall include a provision for division of moneys taken in earnest, when the transaction is not consummated and such moneys retained as forfeiture payment.
3. A broker shall maintain in the broker's office a complete record of all moneys received or escrowed on real estate transactions, in the following manner:
  - a. Bank deposit slips. A bank deposit slip showing the date of deposit, amount, source of the money, and where deposited.
  - b. Bank statements. Monthly bank statements are to be retained and kept on file.
  - c. Trust account checks. Trust account checks should be numbered and all voided checks retained. The checks should denote the broker's business name, address, and should be designated as "real estate trust account".
  - d. Journal. A permanently bound record book called a journal which shows the chronological sequence in which funds are received and disbursed:

- (1) For funds received, the journal must include the date, the name of the party who is giving the money, the name of the principal, and the amount.
  - (2) For disbursements, the journal must include the date, the payee, and the amount.
  - (3) For interest earned and withdrawn, the journal must include the amount, the date earned or withdrawn, and the payee.
  - (4) A running balance must be shown after each entry (receipt or disbursement).
- e. Ledger. This record book will show the receipt and the disbursements as they affect a single, particular transaction as between buyer and seller, etc. The ledger must include the names of both parties to a transaction, the dates and the amounts received. When disbursing funds, the date, payee, and amount must be shown.
- f. Reconciliation. The trust account must be reconciled monthly except in the case where there had been no activity during that month.
- g. Maintain records. Every broker shall keep permanent records of all funds and property of others received by the broker for not less than six years from date of receipt of any such funds or property.

History: Amended effective August 1, 1981; January 1, 1992; April 1, 1992.

General Authority: NDCC ~~43-23-11.1(3)~~ 43-23-14.1, 43-23.4-06(2)

Law Implemented: NDCC 43-23-11.1(1)

70-02-01-19. Definitions - Psychologically impacted properties. As used in this section, the term "psychologically impacted properties" means any real property within this state that is known to be, or is suspected to have been, the site of a suicide, homicide, or other felony, or there are other circumstances, suspicions, or facts which may cause emotional or psychological disturbance or concerns to a prospective purchaser or lessee that have the potential of influencing whether that individual will purchase or lease the property. "Psychologically impacted property" does not mean the fact or suspicion that any present or past occupant is, or has been, infected with or died from human immunodeficiency virus or acquired immune deficiency syndrome or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of real property.

History: Effective April 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-11.1(1)

70-02-01-20. Disclosure of psychologically impacted properties - Not a material defect. The fact that a parcel of real property, or any building or structure thereon, may be psychologically impacted, or may be in close proximity to a psychologically impacted property, is not a material or substantial fact that is required to be disclosed in a sale, lease, exchange, or other transfer of real estate. Licensees are not required to inform a prospective purchaser that certain real property is psychologically impacted real property. However, if the prospective purchaser asks whether the real property may be psychologically impacted, the licensee is required to inquire of the owner whether there are any facts or suspicions that the property is fact psychologically impacted, and to advise the prospective purchaser of the owner's response. If the owner refuses to answer the inquiry, the prospective purchaser must be so advised.

History: Effective April 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-23-11.1(1)



TITLE 71  
Retirement Board





APRIL 1992

STAFF COMMENT: Chapter 71-01-02 contains all new material but is not underscored so as to improve readability.

CHAPTER 71-01-02  
ELECTION RULES

Section	
71-01-02-01	Election Committee
71-01-02-02	Eligible Voters
71-01-02-03	Candidate Eligibility
71-01-02-04	Election Notification
71-01-02-05	Petition Format
71-01-02-06	Procedure for Completing and Filing Petitions
71-01-02-07	Election Ballots
71-01-02-08	Election
71-01-02-09	Canvassing Rules
71-01-02-10	Notification of Election Results
71-01-02-11	Special Elections

71-01-02-01. Election committee.

1. The retirement board must appoint a committee of three, one of whom will be designated as chair, from its membership to oversee elections to the board.
2. Committee members, or their authorized representatives, are responsible for reviewing the election rules for the retirement board membership of the North Dakota public employees retirement system, for counting ballots, and for reporting the election results to the board.

3. Committee members will be appointed at the February meeting of the North Dakota public employees retirement system board to serve until the retirement board meeting for the following February.

History: Effective April 1, 1992.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

#### 71-01-02-02. Eligible voters.

1. All active employees of the state of North Dakota and political subdivisions which participate in the North Dakota public employees retirement system are eligible to cast one vote for each active member vacancy on the retirement board.
2. All persons receiving retirement benefits or deferred vested retirement benefits are eligible to cast one vote for a retiree member vacancy on the retirement board.
3. Persons participating in the health insurance program but not in the retirement system are ineligible to cast votes in retirement board elections.

History: Effective April 1, 1992.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

#### 71-01-02-03. Candidate eligibility.

1. Any active employee of a department of the state of North Dakota, or a political subdivision, who participates in the North Dakota public employees retirement system may become a candidate for election to the board if that department or political subdivision is not currently represented on the retirement board by a board member not up for election.
2. Any person, as of the first day of July of that year, who will receive retirement benefits or who is eligible to receive deferred benefits, may become a candidate for the retiree member to the board.

History: Effective April 1, 1992.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

#### 71-01-02-04. Election notification.

1. The director of the North Dakota public employees retirement system shall ensure that notification of an active member

vacancy and the election is given to all employees through publication of a notice in the North Dakota public employees retirement system newsletter at least three weeks in advance of a filing date for nomination petitions. The director shall notify all persons receiving retirement benefits of the retiree member vacancy and the election at least three weeks in advance of a filing date for nomination petitions.

2. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of election, and where to obtain the nomination petitions for filing.

History: Effective April 1, 1992.  
General Authority: NDCC 54-52-04  
Law Implemented: NDCC 54-52-03

71-01-02-05. Petition format.

1. The nomination petition for an active member on the board must include the signatures of at least one hundred active eligible voters, as determined by the current North Dakota public employee retirement system's membership role; their social security numbers; and their mailing addresses. The nomination petition for the retiree member on the board must include the signature of at least twenty-five persons receiving retirement or deferred vested retirement benefits, as determined by North Dakota public employees retirement system's retirement membership role; their social security numbers; and their mailing addresses.
2. The nomination petition must include the following statement: "We, the petitioners, who are members of the North Dakota Public Employees Retirement System, nominate \_\_\_\_\_ for election to the North Dakota Public Employees Retirement System board."
3. The nomination petition must include a certification by the candidate, as follows: "I accept the nomination and if elected will fulfill the responsibilities as a member of the North Dakota Public Employees Retirement System board."
4. If there is not room for the required signatures on a single nomination petition, additional petitions may be used. Candidates may reproduce, at their own expense, blank nomination petitions that meet the format requirements without requesting additional petitions from the North Dakota public employees retirement system. All nomination petitions used must be certified and signed by the nominee when submitted to the North Dakota public employees retirement system office.

History: Effective April 1, 1992.

General Authority: NDCC 54-52-04  
Law Implemented: NDCC 54-52-03

71-01-02-06. Procedure for completing and filing petitions.

1. No public service or funds may be used by the candidates to promote their election.
2. Nomination petitions must be filed with the North Dakota public employees retirement system no later than four p.m. on the first Friday of May, and must be validated by the election committee or their representatives following the filing deadline and prior to ballots being distributed.
3. Nomination petitions not furnished by the North Dakota public employees retirement system will be accepted provided they are submitted in the prescribed form.
4. A candidate may withdraw his or her nomination petition by providing notice in writing, duly witnessed, and received by the North Dakota public employees retirement system no later than five p.m. on the third Friday of May.
5. Nomination petitions should be accompanied by a three-inch [76.20-millimeter] by five-inch [127.00-millimeter] black and white photograph of the candidate and a narrative not to exceed one hundred twenty-five words. The narrative must be signed to be valid. The absence of a photo or narrative will not invalidate the candidate's eligibility, but only the candidate's name will then appear with the other candidates information which accompanies the ballots.
6. The retirement board reserves the right to edit lengthy narratives to the one hundred twenty-five word limit. Board decisions are final.
7. The board or its representative will inform all candidates of the validation of their candidacy by first-class United States mail.

History: Effective April 1, 1992.  
General Authority: NDCC 54-52-04  
Law Implemented: NDCC 54-52-03

71-01-02-07. Election ballots.

1. Ballots must be prepared by the North Dakota public employees retirement system staff in accordance with the election rules.
2. Ballots must be printed on postcards with return postage supplied and will be mailed to all eligible voters with a

narrative on candidates who have provided that information to the North Dakota public employees retirement system.

3. Ballots must first be arranged with the names of each candidate on the ballot, in an order determined by lot. In printing the ballots, the position of the names must be changed as many times as there are candidates' names on the ballot. The change must be accomplished by taking the name at the head of the ballot and placing it at the bottom and moving the name that was second before the change to the head of the names on the ballot. The same number of ballots must be printed after each change of position so as to result in an equal number of ballots with each candidate's name at the head of the ballot. The ballot must provide a space for write-in candidates.

History: Effective April 1, 1992.  
General Authority: NDCC 54-52-04  
Law Implemented: NDCC 54-52-03

#### 71-01-02-08. Election.

1. Ballots must be mailed by first-class United States mail to the home address of all eligible active voters for an election of an active board member, or eligible retired voters for an election of a retired board member, who are actively at work or retired as determined by the North Dakota public employees retirement system's membership roles as of April fifteenth in the year of the election.
2. North Dakota public employees retirement system members who become eligible to vote after April fifteenth, but before the deadline for the receipt of ballots, may be issued a special election ballot by making their request for such ballot in writing to the North Dakota public employees retirement system office no later than the second Monday in June.
3. Ballots must be returned to the North Dakota public employees retirement system office no later than the close of business on the Friday immediately preceding the third Monday in June.
4. The candidate receiving the highest number of votes must be considered elected. When there is more than one active member board vacancy to be filled, the candidate with the second highest number of votes must be considered elected. If there are three active member board vacancies to be filled, the person with the third highest number of votes must be considered elected.

History: Effective April 1, 1992.  
General Authority: NDCC 54-52-04  
Law Implemented: NDCC 54-52-03



71-01-02-09. Canvassing rules.

1. Ballot counting by election committee members or their authorized representatives will commence at nine a.m. on the third Monday of June and will continue until complete.
2. Each candidate may have one overseer present at the canvassing who may examine each ballot as to its sufficiency after the canvassers have completed the canvassing of all ballots. No overseer may possess a pen, pencil, or other device which could be considered capable of altering a ballot in any manner.
3. A candidate may act as his or her overseer. If a candidate wishes to designate a representative to act as his or her overseer, that candidate must provide a written authorization, duly witnessed, to the election committee at the canvassing. An overseer may act on behalf of more than one candidate; however, each person must show the required authorization from each candidate represented.
4. The overseer may question the decision of the canvassers regarding a ballot after completion of the canvassing. If questioned, the comments of an overseer will be heard. The canvassers will then vote regarding the acceptability of the ballot with the majority vote ruling.
5. A ballot is not valid where the number of votes on the ballot exceeds the number of vacancies in the election. A ballot that does not, in the opinion of a majority of the canvassers, show a clear indication of the voter's intention, may not be counted.
6. If the percentage of votes received by the candidate receiving the highest number of votes is less than one percent more than the votes received by the candidate receiving the next highest number of votes, the board shall order a recount.
7. Tie votes will be determined by a roll of two dice by each of the tied candidates; the successful candidate must have the highest total. If this procedure is necessary, the election committee will establish and notify the tied candidates of the procedure and location for resolving the tie.

History: Effective April 1, 1992.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-01-02-10. Notification of election results.

1. Election results must be presented to the retirement board following the canvassing of votes. Such report must include

an itemization of the number of ballots returned, votes cast for each candidate, votes invalidated, and votes not counted due to late receipt.

2. All candidates will be notified of the election results by mailing a copy of the election report by first-class United States mail no later than the business day following the June meeting of the retirement board.

3. Departments and agencies participating in the North Dakota public employees retirement system will be notified of the election results by mailing a copy of the election report. In

addition, a report of the election results will be included in the North Dakota public employees retirement system newsletter.

History: Effective April 1, 1992.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

#### 71-01-02-11. Special elections.

1. A special election will be called for by the retirement board in the event of a vacancy resulting from the death, resignation, or termination of North Dakota public employees retirement system membership by any elected board members.

2. Special elections must be conducted in accordance with the regular elections rules, except that the board will determine a new election schedule.

3. In the case of a special election, the term to be filled is the unexpired portion of the vacant board position.

History: Effective April 1, 1992.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-03

71-02-03-01.1. Noneligible service credit. Service credit will not be granted to:

1. A member who withdrew under the special withdrawal of July 1, 1977, will not receive service credit for service prior to that date. Prior service if the member received a refund of contributions after July 1, 1966, unless service has been repurchased in its entirety.

2. Any eligible employee of a political subdivision who has waived in writing the employee's right to participate at the time the employee's employer joined the fund, and later joined

the fund, may not be granted credit for prior service or waived service. Service if the member received a refund of contributions after July 1, 1966, unless it is repurchased or purchased in its entirety or in part as specified by the member.

3. A member who received a refund of contributions after July 1, 1966. Prior service for any member whose employer joined the retirement system on or after July 1, 1977, unless purchased for the member at the time the employer joined or unless purchased by the member.

History: Effective November 1, 1990; amended effective April 1, 1992.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-05, 54-52-17, 54-52-19.2

STAFF COMMENT: Articles 71-06 and 71-07 contain all new material but are not underscored so as to improve readability.

#### ARTICLE 71-06

#### PREFUNDED HEALTH INSURANCE CREDIT

Chapter  
71-06-01 Prefunded Health Insurance Credit

#### CHAPTER 71-06-01 PREFUNDED HEALTH INSURANCE CREDIT

Section	
71-06-01-01	Eligibility for Prefunded Retiree Health Premiums for Annuitants and Surviving Spouses Under the North Dakota Public Employees Retirement System, the North Dakota Highway Patrol Retirement System, the Retired Judges Under North Dakota Century Code Chapter 27-17, and annuitants of the Traveler's Retirement Program
71-06-01-02	Calculation of Prefunded Health Insurance Credit
71-06-01-03	For Individuals Receiving More Than One Benefit Entitled to Prefunded Health Insurance Credit
71-06-01-04	Employer Paid Health Premiums
71-06-01-05	Member Contributions

71-06-01-01. Eligibility for prefunded retiree health premiums for annuitants and surviving spouses under the North Dakota public

employees retirement system, the North Dakota highway patrol retirement system, the retired judges under North Dakota Century Code chapter 27-17, and annuitants of the travelers retirement program. All receiving members of the public employees retirement system, highway patrolmen's retirement system, judges retirement system, retired judges under North Dakota Century Code chapter 27-17, and annuitants of the travelers retirement program will be eligible for prefunding of retiree health premiums that satisfy the enrollment requirements of section 71-03-03-05, with the exception of those receiving members who are receiving their benefit based on prior service credits rather than the defined benefits program. Vested members deferring benefits will not be eligible until payment of benefit commences.

History: Effective April 1, 1992.  
 General Authority: NDCC 54-52.1-03.2(b)  
 Law Implemented: NDCC 54-52.1-03.3

71-06-01-02. Calculation of prefunded health insurance credit. Prefunded health insurance credit will be calculated on actual years and months of service, identical to retirement benefits.

1. Prefunded health insurance credit will be subject to reduction factors in the event of early retirement.

For annuitants of the public employees retirement system and North Dakota public employees retirement system judges:

<u>Age at retirement</u>	<u>Reduction factor</u>	<u>Age at retirement</u>	<u>Reduction factor</u>
64 to 65	3%	59 to 60	33%
63 to 64	9%	58 to 59	39%
62 to 63	15%	57 to 58	45%
61 to 62	21%	56 to 57	51%
60 to 61	27%	55 to 56	57%

For annuitants of the travelers retirement program:  
 (This includes those who retired under a discontinued service annuity but does not include those who retired at a normal or optional date.)

<u>Age at retirement</u>	<u>Reduction factor</u>	<u>Age at retirement</u>	<u>Reduction factor</u>	<u>Age at retirement</u>	<u>Reduction factor</u>
64 to 65	3%	59 to 60	33%	54 to 55	63%
63 to 64	9%	58 to 59	39%	53 to 54	69%
62 to 63	15%	57 to 58	45%	52 to 53	75%
61 to 62	21%	56 to 57	51%	51 to 52	81%
60 to 61	27%	55 to 56	57%	50 to 51	87%

For annuitants of the highway patrol fund and national guard security police and firefighters:

<u>Age at retirement</u>	<u>Reduction factor</u>
54 to 55	3%
53 to 54	9%
52 to 53	15%
51 to 52	21%
50 to 51	27%

2. Disabled annuitants receiving benefits under subdivision e of subsection 3 of North Dakota Century Code section 54-52-17, subdivision d of subsection 3 of North Dakota Century Code section 39-03.1-11, or North Dakota Century Code section 52-11-01 will be eligible for full prefunded health insurance credit benefits. No age reduction factor will be applied.
3. A surviving spouse eligible to receive benefits under subdivisions b and c of subsection 6 of North Dakota Century Code section 54-52-17, subdivisions b and c of subsection 6 of North Dakota Century Code section 39-03.1-11, or North Dakota Century Code section 52-11-01 will receive prefunded health insurance credit based on the deceased member's years of service without any age reduction applied.
4. A surviving spouse receiving benefits under the provisions of subdivision a or c of subsection 9 of North Dakota Century Code section 54-52-17; subdivisions a, b, and c of subsection 5 of North Dakota Century Code section 27-17-01; subsection 9 of North Dakota Century Code section 39-03.1-14; or North Dakota Century Code section 52-11-01 will receive prefunded health insurance credit for the duration benefits are paid, based upon the original annuitant's retirement age.

History: Effective April 1, 1992.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3

71-06-01-03. For individuals receiving more than one benefit entitled to prefunded health insurance credit.

1. If an individual is receiving more than one benefit from the public employees retirement system, or other participating system; one as a surviving spouse, and the other based upon their own service credit, the higher of the two prefunded health insurance credits will be applied towards the individual's uniform group health insurance premium. Under no circumstances will these two benefits be combined. If the surviving spouse benefit is the larger of the two benefits, and is limited in duration, the individual will be eligible to utilize his or her own prefunded credit upon cessation of surviving spouse benefits.

2. If an individual is receiving a public employees retirement system retirement benefit as a surviving spouse and is also an active contributor to either the public employees retirement system, the highway patrol retirement system, the judges retirement system, or the travelers retirement program, the individual will not be eligible for prefunded health insurance credit until one of the following events occurs:
  - a. The individual terminates employment, at which time they may receive the prefunded health insurance credit as any other surviving spouse.
  - b. The individual retires and begins receiving a benefit through an eligible retirement system, at which time they may receive the greater of their own prefunded health insurance credit or the credit available as a surviving spouse.
3. If the individual is employed by a political subdivision which does not participate in the public employees retirement system health plan, and is drawing a retirement benefit or a surviving spouse benefit, the individual may receive the prefunded health insurance credit as any other annuitant based upon a retiree premium.
4. If a husband and wife are both participants of a retirement system that provides the prefunded health insurance credit, and are both receiving a benefit, the prefunded credit will be applied as follows:
  - a. If each individual takes a single health insurance plan under the uniform group health insurance program, each will have their respective prefunded health insurance credit applied to their respective premiums.
  - b. If only one individual takes a family health plan under the uniform group health insurance program, only that individual will be able to utilize his or her prefunded health insurance credit applied to the premium.
  - c. In no event will the prefunded health insurance credits for both spouses be combined and applied to only one premium.
5. Persons with service credit in more than one of the participating systems may combine that credit for prefunded health insurance purposes.

History: Effective April 1, 1992.

General Authority: NDCC 54-52.1-03.2(b)

Law Implemented: NDCC 54-52.1-03.3



71-06-01-04. Employer paid health premiums. An individual can only receive prefunded health insurance credit if they are responsible for paying their own health premium. If a previous employer or current employer is paying for a retired individual's health insurance premium, the employer cannot receive the benefit of the prefunded health insurance credit. If this situation occurs, the prefunded health insurance credit applicable to the annuitant will not be applied to the annuitant's health insurance premium until the annuitant begins paying the premium.

History: Effective April 1, 1992.  
General Authority: NDCC 54-52.1-03.2(b)  
Law Implemented: NDCC 54-52.1-03.3

71-06-01-05. Member contributions. Any member contribution received for purposes of prefunding health insurance credit must be refunded without interest to any member who terminates employment and who receives a refund of retirement contributions.

History: Effective April 1, 1992.  
General Authority: NDCC 54-52.1-03.2(b)  
Law Implemented: NDCC 54-52.1-01(1c)

#### ARTICLE 71-07

#### PRETAX BENEFITS PROGRAM

Chapter  
71-07-01            General Organization

#### CHAPTER 71-07-01 GENERAL ORGANIZATION

Section  
71-07-01-01            Plan Document  
71-07-01-02            Summary Plan Document  
71-07-01-03            Program Moneys

71-07-01-01. Plan document. The board must prepare a plan document for the pretax benefits program. The plan document must meet applicable requirements of the Internal Revenue Code. The board must annually review the plan document prior to the beginning of each new plan year. Modifications must be made to reflect changes in the program and to maintain a qualifiable program pursuant to the Internal Revenue Code.

History: Effective April 1, 1992.  
General Authority: NDCC 54-52-04  
Law Implemented: NDCC 54-52.3-02

71-07-01-02. Summary plan document. The executive director must annually prepare a summary plan document. Each employee participating in the pretax benefits program must be given a summary plan document.

History: Effective April 1, 1992.  
General Authority: NDCC 54-52-04  
Law Implemented: NDCC 54-52.3-02

71-07-01-03. Program moneys. Within six months of the end of the plan year, the executive director must return to the payroll clearing account any surplus in the pretax benefits account. Surplus includes employer Federal Insurance Contributions Act tax savings and forfeited employee account balances not used to offset the administrative expenses of the program, negative account balances, and the projected funds necessary to provide for short-term cash-flow requirements when paying claims in the new plan year for the medical spending account.

History: Effective April 1, 1992.  
General Authority: NDCC 54-52-04  
Law Implemented: NDCC 54-52.3-06



TITLE 72  
Secretary of State



FEBRUARY 1992

STAFF COMMENT: Chapter 72-01-02 contains all new material but is not underscored so as to improve readability.

CHAPTER 72-01-02  
COMPUTERIZED CENTRAL INDEXING SYSTEM

Section	
72-01-02-01	Definitions
72-01-02-02	Refiling
72-01-02-03	Lapsed Filings
72-01-02-04	Time
72-01-02-05	Associated Filings or Lien Releases
72-01-02-06	Rejections
72-01-02-07	Central Notice System
72-01-02-08	Joint Uniform Commercial Code and Central Notice System Filings
72-01-02-09	Updates
72-01-02-10	Secured Party or Lienholder Name Changes
72-01-02-11	Searches
72-01-02-12	Insolvency Proceedings
72-01-02-13	Fees

72-01-02-01. Definitions.

1. "Active filings" means those filings which have not been terminated and which have not lapsed.
2. "Agricultural statutory lien" means agricultural processor's lien, agricultural supplier's lien, or agister's lien.
3. "Associated filings" includes all amendments, assignments, continuations, subordination notices, releases, updates, and



terminations which have been filed relating to a specific Uniform Commercial Code or central notice system financing statement.

4. "Central notice system" means farm product central notice system adopted pursuant to North Dakota Century Code section 41-09-46.
5. "Current secured party" means the person or entity which the financing statement and its associated filings show as being the last one to whom the security interest has been assigned. If neither the original financing statement nor the associated filings show any assignments, then it means any original secured party who has not released all of his interest in all of the collateral.
6. "Debtor's address" means post-office mailing address.
7. "Debtor's name", unless the context indicates otherwise, means the debtor's legal name from birth, marriage, court order, partnership agreement, or articles of incorporation.
8. "Federal liens" means those federal liens described in North Dakota Century Code section 35-29-01.
9. "Filing office" means any one of the fifty-three county register of deeds' offices or the secretary of state's office.
10. "Financing statement" means any document submitted for filing as an effective financing statement under North Dakota Century Code section 41-09-41.
11. "Lapsed filing" means a filing which has become ineffective either because it has expired or because it was originally filed prior to January 1, 1992, and was not submitted for refiling prior to July 1, 1992, in the filing office in which the original was filed.
12. "Lienholder" means any person or entity which has an agricultural statutory lien.
13. "Nonstandard form" means any document or paper presented for filing which is not specified as a standard form, whether presented as a separate filing or as an attachment to a standard form.
14. "Secured party's address" means post-office mailing address.
15. "Secured party's name", unless the context indicates otherwise, means the secured party's legal name from birth, marriage, court order, partnership agreement, or articles of incorporation.

16. "Social security number" means social security number as assigned by the social security administration.
17. "Standard form" means a form preapproved for use by the North Dakota secretary of state including the UCC-1/CNS-1, the UCC-3/CNS-3, the UCC-5/CNS-5, the UCC-1A, the UCC-3A, the ASL-1 (agricultural processor's lien), the ASL-2 (agricultural supplier's lien), the ASL-3 (agister's lien), and the ASL-4 (lien release) approved by the North Dakota secretary of state. A single eight and one-half inches by eleven inches page solely listing collateral may be attached to the UCC-1/CNS-1 or the UCC-3/CNS-3 and still be a standard filing.
18. "Tax identification number" means the federal tax identification number issued to the entity by the internal revenue service.
19. "Uniform Commercial Code" means Uniform Commercial Code as adopted in North Dakota Century Code title 41.
20. "Update" means a change or correction to the name, address, social security number, tax identification number, or telephone number of the current secured party.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02, 41-09-46

#### 72-01-02-02. Refiling.

##### 1. Procedure for refiling.

- a. A copy of the first page of each financing statement which is to be refiled must be submitted along with a letter requesting refiling to the filing office in which the original document was filed.
- b. A copy of each agricultural statutory lien which is to be refiled must be submitted along with a letter requesting refiling to the filing office in which the original statutory lien was filed.
- c. A letter must be sent to the filing officer requesting federal liens be refiled containing the information which is to be refiled.
- d. The filing officer shall issue and mail to the person requesting the refiling a certificate of refiling which identifies each original filing and each associated filing which has been refiled along with both the original filing number and the new filing number.

- e. All central notice system filings which are active in the secretary of state's office as of January 1, 1992, will be automatically refiled. No notice or request by the secured party is required.
  - f. All agricultural statutory lien notices which are active in the secretary of state's office as of January 1, 1992, will be automatically refiled. No notice or request by the lienholder is required.
2. Adding new information when refileing.
- a. If no social security number or tax identification number has ever been submitted for the debtor on a filing, the debtor's social security number or tax identification number can be added by the secured party or lienholder at the time or refileing by submitting a Uniform Commercial Code refileing form.
  - b. The Uniform Commercial Code refileing form can be used to add a social security number or tax identification number for the secured party, assignee, or lienholder.
  - c. If the Uniform Commercial Code refileing form is used, it must be attached to the copy of the first page of the financing statement or agricultural statutory lien which is submitted with the letter requesting refileing.
  - d. A secured party or lienholder may include in the letter requesting refileing its social security number or tax identification number and its current telephone number with a request that those numbers be added to each filing listed for refileing. If this is done, the filing officer shall add this information to each filing on that particular request for refileing.
  - e. There is no fee for adding information under this subsection.
3. Time deadline for refileing. Only those financing statements, federal liens, agricultural statutory liens, and notices for which requests for refileing or refileing documents are submitted by midnight on June 30, 1992, or mailed to the correct filing office, postage prepaid, with a postmark no later than June 30, 1992, may be refiled.
4. Documents not refiled. All financing statements, agricultural statutory liens, and federal liens which have not expired, been terminated, or refiled by July 1, 1992, must be stored in the filing office for a period of five years.
5. Rejections.

- a. Any time a filing office receives a request for refiling for a filing which is not in its currently active filings, the request for refiling will be rejected.
- b. The filing office in all such cases will send a letter to the person submitting the request for refiling stating the date the request for refiling was submitted and whether the termination fee, if required, was submitted with the request for refiling. The copy of the document submitted along with the request for refiling will be returned to the submitting party with the rejection letter.
- c. Any fees tendered with the request for refiling will be refunded.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02, 41-09-46

Law Implemented: NDCC 41-09-28.1, 41-09-46

#### 72-01-02-03. Lapsed filings.

1. Any financing statement which is being submitted for filing without the debtor's signature on the basis that it covers collateral on which the secured party had a filing which has lapsed must be submitted to the filing office where the original of the lapsed filing was filed.
2. Any filing submitted under this section must identify the file number of the original financing statement which has lapsed.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 41-09-41

72-01-02-04. Time. Each financing statement, associated filing, agricultural statutory lien, and federal lien accepted for filing will be given a computer generated filing number and marked with the date and time filed. The time will be specified to the tenth of a second. The time placed on each new filing beginning January 1, 1992, will be based on prevailing central time.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02, 41-09-46

Law Implemented: NDCC 41-09-42, 41-09-43, 41-09-44, 41-09-45, 41-09-46

#### 72-01-02-05. Associated filings or lien releases.

1. Each associated filing or lien release must be filed in the same filing office as the original financing statement or lien to which it relates.

2. Each assignment, continuation, release, notice of subordination, amendment, update, and termination must be filed as a separate document.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02, 41-09-46

Law Implemented: NDCC 41-09-42, 41-09-43, 41-09-44, 41-09-45, 41-09-46

#### 72-01-02-06. Rejections.

1. Any financing statement submitted for filing with any filing officer must be rejected if it does not have all of the following:
  - a. Each debtor's social security number or tax identification number;
  - b. Each debtor's signature, unless it meets one of the criteria specified in subsection 2 of North Dakota Century Code section 41-09-41;
  - c. The secured party's signature if the filing is being submitted without the debtor's signature pursuant to subsection 2 of North Dakota Century Code section 41-09-41, or if the filing contains a notice of assignment by the secured party;
  - d. The original file number of the financing statement which has lapsed if filed pursuant to subdivision c of subsection 2 of North Dakota Century Code section 41-09-41;
  - e. An address for the secured party from which further information may be obtained; and
  - f. Some collateral listed.
2. For the purposes of subsection 1, any debtor name preceded by d/b/a (doing business as) or a/k/a/ (also known as) or f/k/a (formerly known as) does not require a separate signature. It does, however, require the listing of the individual's social security number or the entity's tax identification number.
3. A request for refiling pursuant to section 72-01-02-02, continuation statement, termination statement, or other associated filing will be rejected if the financing statement or lien to which it relates is not on file as an active filing in that filing office.
4. Any amendment adding or changing collateral will be rejected if it does not contain the signature of each current debtor and the current secured party. Any amendment adding or

changing the name of a debtor will be rejected if it does not contain the signature of the affected debtor and of the current secured party. Any other associated filing will be rejected if it does not contain the current secured party's signature.

5. Any agricultural statutory lien submitted for filing with any filing officer must be rejected if it is not a verified statement containing all of the following:
  - a. Name and address of lienholder;
  - b. Debtor's name; and
  - c. The debtor's social security number or tax identification number.
6. Any document tendered for filing which is rejected by the filing officer will be marked with the time and date it was tendered, whether the correct filing fee was tendered with the document, the reason for the rejection, and will indicate the filing officer. Any fees tendered with the rejected filing will be refunded.
7. Request for reinstatement of a filing.
  - a. If a filing has been rejected pursuant to subsection 3, the secured party or lienholder may submit a request for reinstatement of filing. The request must be accompanied by two legible copies of the lien or original financing statement and each associated filing which had been filed showing the file number, and an affidavit by the secured party or lienholder stating the debtor's current address and that the financing statement has not been terminated and has not lapsed or that the lien has not been released. If any debtor listed on the financing statement is currently involved in an insolvency proceeding, notice of that proceeding must be attached.
  - b. Upon receipt of a proper request for reinstatement, the filing officer shall reinstate the filing and send to each listed debtor a copy of the request for reinstatement, along with attachments, and notice that the financing statement or lien has been reinstated.
  - c. Any file which has been reinstated must be marked as a reinstated file both on the physical documents and in the index.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 41-09-41, 41-09-42, 41-09-44, 41-09-46



72-01-02-07. Central notice system.

1. If no quantity of crops or livestock is designated in the central notice system filing, the filing must be deemed to include all crops or livestock listed.
2. If no crop year is designated in the central notice system filing, the filing must be deemed to include all crop years for the effective period of the filing.
3. A description of the crops or livestock must be included in the central notice system filing if needed to distinguish those covered by the perfected security interest from other crops or livestock owned by the same debtor but not subject to the security interest.
4. A continuation of a central notice system must be signed by both the debtor and the secured party.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 41-09-28, 41-09-41

72-01-02-08. Joint Uniform Commercial Code and central notice system filings.

1. If the Uniform Commercial Code financing statement and the central notice system financing statement were filed together and given one filing number, all amendments, updates, assignments, subordinations, and releases submitted for either of them must affect both of them.
2. A termination of the Uniform Commercial Code filing statement will automatically terminate the central notice system filing as well. A central notice system filing may be terminated without terminating the Uniform Commercial Code filing.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 41-09-28, 41-09-41, 41-09-46

72-01-02-09. Updates. The secured party may submit an update to the filing office in which the original filing was made by filing a UCC/3/CNS-3 clearly specifying the changes in the secured party information. The update must contain the secured party's signature. The debtor's signature is not required.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02, 41-09-46

Law Implemented: NDCC 41-09-46

72-01-02-10. Secured party or lienholder name changes.

1. When a secured party or lienholder legally changes its name, the secured party or lienholder may submit to the secretary of state a request that its name change be included in a separate name change index.
2. The request must include the old name, address, and social security number or tax identification number, the new name, address, social security number or tax identification number, and telephone number; and the effective date of the name change.
3. The request must be accompanied by a copy of an officially recorded document authorizing the name change, i.e., articles of amendment, articles of merger, or court order.
4. The secretary of state's office shall enter into a separate name change index the date entered, the old name and address, the new name, address, telephone number, social security number or tax identification number; the type of documentation, and the effective date of the name change.
5. The filing officer will check the name change index each time a UCC-3/CNS-3 or a UCC-1/CNS-1 termination or a lien release is submitted by someone other than the entity listed as current secured party or lienholder. If the name change index verifies that the submitting party is actually a current secured party or lienholder with a new name, the filing will be accepted.
6. Effective July 1, 1992, any secured party or lienholder which has a name change in the name change index may request the secretary of state to update each filing on which it is the current secured party or lienholder to show the new name. Any request under this subsection must include the exact secured party or lienholder name or social security number for which a change is desired, and the new name and social security number or tax identification number.
7. The secretary of state's office will change the name of the current secured party or lienholder on each filing for which an exact match of the old secured party or lienholder name or social security number or tax identification number can be made.

History: Effective February 1, 1992.  
General Authority: NDCC 28-32-02, 41-09-46  
Law Implemented: NDCC 41-09-46

72-01-02-11. Searches.

1. Public access. Any person may obtain from any filing office at no charge the following information:
  - a. Whether any filings exist for a specific name, or social security number or tax identification number, within the computerized central index system; and
  - b. If any filings exist for the specific name, or social security number or tax identification number, the index in which they appear; and
  - c. The filing office in which the documents are located.
2. Data bases. Included within the computerized central index systems are the following indexes which may be searched:
  - a. Uniform Commercial Code index;
  - b. Central notice system index;
  - c. Agricultural statutory lien index;
  - d. Agricultural statutory lien notice index; and
  - e. Federal lien index.
3. Types of searches.
  - a. A search may be conducted by name of the debtor, or name of secured party, or social security number or tax identification number, or file number.
  - b. Each name, or social security number or tax identification number, searched must be deemed a separate search.
  - c. A search request must indicate which index or indexes are to be searched.
  - d. A copy of a filing must include all pages of the original filing and of each associated filing.
4. Copy requests.
  - a. A copy of a filing must include all pages of the original filing and of each associated filing.
  - b. Any request for a certified copy of a filing must be made to the filing office where the original filing was made.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02, 41-09-46

Law Implemented: NDCC 41-09-46

72-01-02-12. Insolvency proceedings. When a filing officer receives a notice from a secured party that a particular Uniform Commercial Code financing statement includes a debtor who is involved in an insolvency proceeding, the filing officer shall flag the Uniform Commercial Code filing so it will not lapse pending termination of the insolvency proceeding. The secured party is responsible for notifying the filing officer when the insolvency proceeding is terminated. The financing statement will lapse at the normal expiration period or sixty days after termination of the insolvency proceedings, whichever is later, unless a timely continuation statement is filed.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 41-09-42, 41-09-46

72-01-02-13. Fees.

1. Termination fees must be paid at the time of the original filing of any Uniform Commercial Code financing statement, separate central notice system filing, agricultural statutory lien, separate agricultural statutory lien notice, or federal lien.
2. Termination fees must be paid at the time of refileing any Uniform Commercial Code financing statement, agricultural statutory lien, or federal lien for which the termination fee has not been paid prior to the refileing.
3. The fee for terminating a central notice system filing or an agricultural statutory lien notice which was refiled automatically pursuant to section 72-01-02-02 is five dollars and must be paid at the time the filing is terminated.
4. The fee for having information faxed to a requesting party is three dollars. A maximum of twenty pages may be faxed.
5. The fee for filing an update is five dollars.
6. The fee for filing a name change in the name change index is one hundred dollars.
7. The fee for having all filings updated with a current secured party's name change is four hundred dollars.
8. Filing fees are the same in all fifty-four filing offices for any Uniform Commercial Code or central notice system filing, agricultural statutory lien, agricultural statutory lien notice, or federal lien.
9. All fees not specified within this section are as set forth in North Dakota Century Code section s41-09-28.1, 41-09-42, 41-09-43, 11-18-05, and 35-29-05.

10. Fees will be billed for any secured party or searching party who has received prior approval for billing, has been assigned a billing number, and who indicates a desire to be billed for that particular filing or search.
11. Any person or entity may prepay into the secretary of state's office funds to be drawn against for filing fees, search fees, or any other charges normally billed by the secretary of state's office.

History: Effective February 1, 1992.

General Authority: NDCC 28-32-02, 41-09-42

Law Implemented: NDCC 41-09-28.1, 41-09-42, 41-09-43

MAY 1992

ARTICLE 72-02.1  
ATHLETIC COMMISSIONER

[Repealed effective May 1, 1992]

STAFF COMMENT: Article 72-02.2 contains all new material but is not underscored so as to improve readability.

ARTICLE 72-02.2  
ATHLETIC COMMISSIONER

Chapter  
72-02.2-01 Athletic Commissioner

CHAPTER 72-02.2-01  
ATHLETIC COMMISSIONER

Section	
72-02.2-01-01	Definitions
72-02.2-01-02	Sponsoring Organization to Submit Rules
72-02.2-01-03	Sponsoring Organization to Provide Adequate Health Safeguards
72-02.2-01-04	Sponsoring Organization to Register Names of Physicians
72-02.2-01-05	Licenses



72-02.2-01-06	Athletic Commissioner to be Notified of Outcome of Exhibition
72-02.2-01-07	Sale of Tickets
72-02.2-01-08	Persons Excused From Presenting Tickets
72-02.2-01-09	Duty to Provide Insurance
72-02.2-01-10	Mandatory Resting Period for Contestants Between Exhibitions
72-02.2-01-11	Promoters to Provide Fight History
72-02.2-01-12	Athletic Commissioner to be Notified of Amateur Exhibitions
72-02.2-01-13	Prohibited Exhibitions
72-02.2-01-14	Professional Wrestling Exempt From Rules
72-02.2-01-15	Cornerpersons

72-02.2-01-01. Definitions. For purposes of this chapter, unless the context otherwise requires:

1. "Boxing" means a contest or exhibition in which the act of attack and defense is practiced with gloved fists by two contestants.
2. "Commissioner" means the North Dakota state athletic commissioner.
3. "Contestant" means participant in an exhibition who receives remuneration, directly or indirectly, as consideration of their performance.
4. "Exhibition" means any bout, contest, or sparring exhibition, in which participants intend to and actually inflict kicks, punches, blows, or employ other techniques to temporarily incapacitate an opponent in an exhibition, regardless of whether the object of the participants is to win or display their skills without striving to win.
5. "Kickboxing" means any form of boxing or martial arts in which incapacitating blows or other techniques are delivered with any part of the arm below the shoulder, including the hand, and any part of the leg below the hip, including the foot, including, but not limited to, kickboxing, karate, tae kwon do, and judo.
6. "Promoter" or "sponsoring organization" means any person, club, corporation, or association, and in the case of a corporate promoter, includes any officer, director, employee, or stockholder thereof, who produces, arranges, or stages any professional boxing or kickboxing exhibition.

History: Effective May 1, 1992.  
 General Authority: NDCC 53-01-07  
 Law Implemented: NDCC 53-01-07

72-02.2-01-02. Sponsoring organization to submit rules. A boxing, kickboxing, or sparring exhibition may not be held unless approved by the commissioner at least two weeks prior to the exhibition date.

The commissioner will not approve any exhibition until the sponsoring organization affirms their acceptance of the North Dakota state athletic commission rules governing boxing or kickboxing, or submits a copy of the proposed fight rules to the athletic commissioner for approval. The alternative rules must be generally recognized in the boxing or kickboxing industry. The North Dakota rules will be understood to be in effect unless another set of rules is specifically approved in writing as an exception to normal practice by the commissioner.

History: Effective May 1, 1992.  
General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07

72-02.2-01-03. Sponsoring organization to provide adequate health safeguards. An exhibition will not be approved by the commissioner unless the sponsoring organization, in the opinion of the commissioner, has provided adequate safeguards to protect the health of the participants. Adequate safeguards must include, but are not limited to:

1. The presence of the highest level of emergency medical personnel available in the community, i.e., emergency medical technician, emergency medical technician-intermediate, or emergency medical technician-paramedic, as defined by the North Dakota state department of health and consolidated laboratories, emergency health services section. The appropriate level of emergency medical personnel present must be determined by the commissioner.
2. The presence of at least one physician, licensed by the North Dakota state board of medical examiners and licensed as a ring physician by the North Dakota state athletic commission, at ringside at all times during the exhibition. Ring physicians licensed by other state athletic commissions may be allowed at ringside at the discretion of the commissioner.
3. The presence of an ambulance, dedicated solely to the participants, at the site of the exhibition. The ambulance may be released in an emergency, only temporarily and only with the approval of the designated ring physician. The exhibition must be held in abeyance until the ambulance and the emergency medical personnel return to the exhibition site.
4. Receipt of certification acceptable to the commissioner certifying that the contestants have not been knocked unconscious, or been suspended by any athletic commission, within the thirty days prior to the exhibition.

5. Receipt of certification acceptable to the commissioner certifying that the contestants are not suffering from any preexisting conditions which would hinder the ability of the contestant to compete in the exhibition.
6. All persons, including, but not limited to, managers, cornerpersons, timekeepers, ring physicians, and referees, coming into contact with a contestant during the course of an exhibition, other than another contestant in the same exhibition, must wear rubber or plastic gloves, acceptable to the commissioner, at all times during the exhibition.

History: Effective May 1, 1992.  
 General Authority: NDCC 53-01-07  
 Law Implemented: NDCC 53-01-07

72-02.2-01-04. Sponsoring organization to register names of physicians. The sponsoring organization must register the names of all licensed ring physicians acting in any official capacity, even if registered with another state's athletic commission. The ring physician designated as the primary ring physician may appoint associates to assist in the facilitation of the ring physician's duties. The designated ring physician must directly supervise any appointed associates and submit their names to the commissioner. The associates so appointed must be licensed in North Dakota for boxing purposes.

History: Effective May 1, 1992.  
 General Authority: NDCC 53-01-07  
 Law Implemented: NDCC 53-01-07

72-02.2-01-05. Licenses. All contestants, promoters, managers, referees, judges, timekeepers, cornerperson, and physicians must have a current license issued by the commissioner in order to participate in an exhibition. The license must be issued upon satisfactory application, payment of the required fee, and approval by the commissioner. The license is an annual license which expires December thirty-first of each calendar year. The annual fee is as follows:

Kickboxers and boxers	\$ 10.00
Promoters	100.00
Managers	25.00
Referees	25.00
Judges	25.00
Timekeepers	10.00
Cornerpersons	10.00
Physicians	no fee

Persons performing multiple duties must be licensed for each duty, but are not responsible for payment of more than one license fee. The license fee required of those holding more than one license is the highest of the applicable license fees.

History: Effective May 1, 1992.  
General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07

72-02.2-01-06. Athletic commissioner to be notified of outcome of exhibition. The sponsoring organization shall notify the commissioner of the outcome of the exhibition within ten days after the exhibition.

History: Effective May 1, 1992.  
General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07

72-02.2-01-07. Sale of tickets. The sponsoring organization shall notify the commissioner of all parties preparing and marketing tickets to any exhibition covered by this chapter. The sponsoring organization shall submit a financial report to the commissioner, on a form prescribed by the commissioner, within ten days after the exhibition.

History: Effective May 1, 1992.  
General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07

72-02.2-01-08. Persons excused from presenting tickets. No person may be admitted to any exhibition without presenting an admission ticket to the person or persons responsible for taking tickets. The following persons may be admitted to an exhibition without presenting a ticket of admission:

1. The commissioner;
2. Persons designated by the commissioner for official duty;
3. Officials required to attend under provisions of state laws or the commissioner's rules;
4. The principals, managers, and seconds who are involved in the exhibition;
5. The emergency medical personnel on duty; and
6. The police officers, firefighters, and other public officials actually on duty.

For the above-excepted persons, appropriate admission tickets or badges may be issued in such number and in such form as approved by the commissioner.

History: Effective May 1, 1992.

General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07

72-02.2-01-09. Duty to provide insurance. Prior to an exhibition, any person, party, corporation, or sponsoring organization acting as a promoter must file proof of adequate insurance for the protection of the contestants, officials, and the attending public with the commissioner. However, insurance to cover injuries incurred by a contestant as a result of an exhibition is the responsibility of the individual contestant.

History: Effective May 1, 1992.  
General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07

72-02.2-01-10. Mandatory resting period for contestants between exhibitions. A contestant may not compete in an exhibition in this state until seven days have elapsed since the contestant's last exhibition and any medical suspension, issued by a suspending authority, has expired. Any person, party, corporation, or sponsoring organization acting as a promoter, or any manager, agent, or principal, or any licensed official must report any known sanctions or suspensions, permanent or temporary, occurring within the previous six months, to the commissioner. Failure to report the above information is grounds for license forfeiture.

History: Effective May 1, 1992.  
General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07

72-02.2-01-11. Promoters to provide fight history. Any person, party, corporation, or sponsoring organization acting as a promoter must provide the commissioner with the dates and outcome of any exhibition in which the contestant has competed and the dates and location of any exhibition in which the contestant is scheduled to compete for the thirty calendar days prior to the exhibition at issue, and those thirty calendar days immediately subsequent to the exhibition at issue.

History: Effective May 1, 1992.  
General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07

72-02.2-01-12. Athletic commissioner to be notified of amateur exhibitions. Any person, party, corporation, or sponsoring organization acting as a promoter of an amateur boxing or kickboxing exhibition must notify the commissioner of the event one week prior to the date of the exhibition.

History: Effective May 1, 1992.

General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07

72-02.2-01-13. Prohibited exhibitions. The commissioner will not license the following type of boxing or kickboxing exhibitions:

1. Exhibitions containing both amateur and professional contests on the same card.
2. Exhibitions in which more than two contestants appear in the ring at the same time.
3. Exhibitions in which members of the opposite sex are matched against each other.
4. Any barroom type brawls, "so you think you're tough" type contests, or roughneck type exhibitions, where any contestant receives remuneration, directly or indirectly, and where a contestant has no prior organized amateur or professional training.

History: Effective May 1, 1992.  
General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07

72-02.2-01-14. Professional wrestling exempt from rules. Nothing in these rules may be construed to prohibit the activity commonly known and advertised as professional wrestling. Professional wrestling, governed by a nationally recognized professional wrestling organization is an entertainment event, rather than a boxing or kickboxing exhibition, or other sporting event. The commissioner, in the commissioner's discretion, may determine an event is exempt under this section.

History: Effective May 1, 1992.  
General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07

72-02.2-01-15. Cornerpersons. Each contestant may have no more than three licensed cornerpersons at ringside during an exhibition.

History: Effective May 1, 1992.  
General Authority: NDCC 53-01-07  
Law Implemented: NDCC 53-01-07





TITLE 73  
Securities Commission



MAY 1992

73-02-02-04. Approval of the Chicago board options exchange. The Chicago board options exchange, incorporated, is approved for purposes of the marketplace exemption as set forth in subsection 16 of North Dakota Century Code section 10-04-05.

History: Effective May 1, 1992.  
General Authority: NDCC 10-04-05(16)  
Law Implemented: NDCC 10-04-05(16)

73-02-03-04. List of approved nationally recognized securities manuals. The following nationally recognized securities manuals are approved for purposes of subsection 8 of North Dakota Century Code section 10-04-06:

1. Standard and Poor's Standard Corporation Descriptions;
2. Moody's Industrial Manual;
3. Moody's Bank and Finance Manual;
4. Moody's Transportation Manual;
5. Moody's Public Utility Manual; and
6. Fitch's Individual Stock Bulletin.

History: Effective May 1, 1992.  
General Authority: NDCC 10-04-06(8)  
Law Implemented: NDCC 10-04-06(8)

73-02-06-03. Registration and renewal.



1. Every salesman and dealer registration effected through the central registration depository expires on December thirty-first in each year unless renewed in accordance with the procedure prescribed by the central registration depository.
2. Every salesman and dealer registration not effected through the central registration depository and the registration of ~~dealers and~~ investment advisers ~~expire~~ expires on the first day of May in each year unless renewed. Registration may be renewed under this subsection each year at any time not less than fifteen nor more than sixty days before expiration by the payment of the proper renewal fee and in the case of a dealer or investment adviser, by the filing of a financial statement prepared in accordance with generally accepted accounting principles and certified to by an independent certified public accountant or by a responsible officer or member, as the commissioner may require, showing the financial condition of such dealer or investment adviser as of the most recent practicable date.

History: Effective July 1, 1981; amended effective May 1, 1992.

General Authority: NDCC 10-04-10

Law Implemented: NDCC 10-04-10

73-02-07-01. Recordkeeping requirements.

1. All dealers, salesmen, investment advisers, and investment adviser representatives shall keep and maintain all books and records required to be kept by the securities and exchange commission and the national association of securities dealers.
2. All dealers, salesmen, investment advisers, and investment adviser representatives shall keep and maintain at their branch offices and offices of supervisory jurisdiction, open to inspection by the commissioner, the following items relating to the operations of such offices:
  - a. A complaint file containing a separate file of all written customer or client complaints and any action taken by the dealer, salesman, investment adviser, investment adviser representative, branch office, and office of supervisory jurisdiction with respect to those complaints.
  - b. A litigation file documenting any criminal or civil actions filed in any state or federal court against the dealer, salesman, investment adviser, investment adviser representative, branch office, and office of supervisory jurisdiction or against any personnel with respect to a securities or an investment advisory transaction and the disposition of any such litigation.

c. A correspondence file containing any and all correspondence disseminated to or received from the public in connection with the business of the dealer, salesman, investment adviser, and investment adviser representative.

d. In the case of dealers and salesmen:

(1) Commission runs showing the amount of commissions earned by each agent of the branch office and office of supervisory jurisdiction; and

(2) Confirmations of purchase and sale sent to each customer.

History: Effective September 1, 1990; amended effective May 1, 1992.

General Authority: NDCC 10-04-10.3

Law Implemented: NDCC 10-04-10.3





TITLE 75  
Department of Human Services



MAY 1992

AGENCY SYNOPSIS: Chapter 75-03-21 Licensing of Adult Family Foster Care Homes.

Section 75-03-21-01 - Definitions: Defines 26 terms used in the chapter.

Section 75-03-21-02 - Application: Describes the requirements for a completed application.

Section 75-03-21-03 - License: States the meaning, duration, and limitations of a license.

Section 75-03-21-04 - Facility: Establishes requirements for the physical structure of the adult family foster care home. Includes reference to the Life Safety Code and contains minimum standards for bedroom facilities used by residents.

Section 75-03-21-05 - Sanitation: Establishes minimum standards for sewage and garbage disposal. Establishes minimum standards for drinking water and milk.

Section 75-03-21-06 - Safety: Establishes fire safety standards. Requires firearms safety. Prohibits nonconfined pets which are a danger to the residents. Requires fire inspection deficiencies to be corrected within 60 days after issuance of the fire inspection report.

Section 75-03-21-07 - Insurance: Requires minimum insurance on vehicles operated by the provider, and requires minimum household liability insurance.

Section 75-03-21-08 - Personal Characteristics: Requires the provider to be an adult who is capable of providing necessary care to adult family foster care residents.

Section 75-03-21-09 - General Practices: Contains several requirements and proscriptions intended to assure that adult family foster care residents are treated and cared for properly.

Section 75-03-21-10 - Substitute Caregiver: Establishes minimum requirements for substitute caregivers.

Section 75-03-21-11 - Meals and Nutrition: Establishes minimum standards for meals served to adult family foster care residents.

Section 75-03-21-12 - Preadmission Information and House Rules: Requires operators of an adult family foster care home to furnish prospective residents with information about how the home is operated prior to the persons entering the home.

Section 75-03-21-13 - Termination of Care: Requires that the provider terminate care of a resident in certain circumstances. Also requires that the provider give a resident at least 30 days' written notice of termination of care, and also requires referral or transfer of a resident to a more appropriate setting.

Section 75-03-21-14 - Action on License Application: Requires the department to grant or deny a license application. Authorizes the department to issue a license subject to such reasonable limitations, restrictions, or conditions as may be determined necessary and appropriate to assure safety and adequate care for residents.

Section 75-03-21-15 - Revocation or Denial of License: Authorizes the department to revoke or deny a license for any reason permitted in law. Authorizes a provider who receives a notice of revocation and makes a timely appeal to continue to operate home pending a final administrative decision unless the revocation is based upon reasons which present an imminent danger to the health, welfare, or safety of the residents.

Section 75-03-21-16 - Denial of License: Describes the circumstances in which a license application may be denied.

Section 75-03-21-17 - Distribution of Notice of Denial or Revocation: Permits a notice of revocation or a notice of denial to be provided to any resident, to any person who resides in a place under circumstances which may require that place to be licensed as a home for care of that person, to any guardian, conservator, placement agency, or person making placement of such resident or person, and to any placement agency which has placed residents for care in the home or in other licensed homes in the region.

Section 75-03-21-18 - Reapplication After Denial or Revocation: Establishes a limit on reapplications by persons whose license has been revoked or whose license application has been reapplied.

**STAFF COMMENT:** Chapter 75-03-21 contains all new material but is not underscored so as to improve readability.

CHAPTER 75-03-21  
LICENSING OF ADULT FAMILY FOSTER CARE HOMES

Section	
75-03-21-01	Definitions
75-03-21-02	Application
75-03-21-03	License
75-03-21-04	Facility
75-03-21-05	Sanitation
75-03-21-06	Safety
75-03-21-07	Insurance
75-03-21-08	Personal Characteristics
75-03-21-09	General Practices
75-03-21-10	Substitute Caregiver
75-03-21-11	Meals and Nutrition
75-03-21-12	Preadmission Information and House Rules
75-03-21-13	Termination of Care
75-03-21-14	Action on License Application
75-03-21-15	Bases for License Action - Permitting Operation After Notice of Revocation
75-03-21-16	Denial or Revocation of License
75-03-21-17	Distribution of Notice of Denial or Revocation
75-03-21-18	Reapplication After Denial or Revocation

75-03-21-01. Definitions.

1. "Abuse" means the willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation, or financial exploitation to or of a resident.
2. "Activities of daily living" means tasks of a personal nature that are performed daily and which involve such activities as bathing, dressing, toileting, transferring from bed or chair, continence, eating or feeding, and mobility inside the home.
3. "Adult family foster care home" means a licensed, occupied private residence in which four or fewer residents, who are not related by blood or marriage to the licensee of the home, are received, kept, and provided with food, shelter, and care on a twenty-four-hour basis, for hire or compensation.
4. "Agency" means an organization which monitors adult family foster care homes.
5. "Applicant" means the person or persons completing and submitting to the department an application to be licensed as an adult family foster care home.



6. "Care" means personal, nonmedical services provided to assist a resident with activities of daily living.
7. "Caregiver" means a qualified individual who gives care to an adult living in an adult family foster care home.
8. "County agency" means the county social service board in the county where the adult family foster care home is located.
9. "Department" means the North Dakota department of human services.
10. "Exploitation" means the act or process of a provider using the income, assets, or person of a resident for monetary or personal benefit, profit, gain, or gratification.
11. "Home" means adult family foster care home.
12. "License" means a document issued by the North Dakota department of human services authorizing an applicant to operate an adult family foster care home.
13. "Licensed capacity" means maximum number of residents for which the adult family foster care home is licensed.
14. "Licensing study" means an assessment of the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11.
15. "Mental anguish" means psychological or emotional damage that requires medical treatment or care, or is characterized by behavioral changes or physical symptoms.
16. "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with adult family foster care home laws, rules, and standards.
17. "Neglect" means the failure of the provider to provide the goods or services which are necessary to avoid physical harm, mental anguish, or mental illness.
18. "Physical injury" means damage to bodily tissue caused by nontherapeutic conduct, which includes fractures, bruises, lacerations, internal injuries, dislocations, physical pain, illness, or impairment of physical function.
19. "Provider" means the person who operates a licensed adult family foster care home.
20. "Resident" means any adult who is receiving room, board, and care in an adult family foster care home for compensation on a twenty-four-hour basis, but does not mean any other person who lives or stays in the home.

21. "Room and board" means the provision of meals and a place to sleep.
22. "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, 12-1-20-03, 12-1.20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, and 12.1-20-11.
23. "Substantial functional impairment" means a substantial inability, determined through observation, diagnosis, evaluation, or assessment, to live independently or provide self-care resulting from physical limitations.
24. "Substantial mental impairment" means a substantial disorder of thought, mood perception, orientation, or memory which grossly impairs judgment, behavior, or the ability to live independently, or provide for self-care, and which is determined by observation, diagnosis, evaluation, or assessment.
25. "Vulnerable adult" means an adult who has substantial mental or functional impairment.
26. "Willfully" means willfully as defined in North Dakota Century Code section 12.1-02-02.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

#### 75-03-21-02. Application.

1. An application for a license to operate a home must be made to the county agency in the county where the applicant proposes to provide adult family foster care.
2. An application must be made in the form and manner prescribed by the department.
3. A new application for a license must be filed immediately upon change of provider or location.
4. An application is not complete until all required information and verifications are submitted to the department, including, but not limited to:
  - a. Fire inspections by the state fire marshal or local fire inspector, if required under subsection 7 of section 75-03-21-06;
  - b. Physician's examination, when requested by the department;

- c. Psychological examinations, when requested by the department;
- d. Proof of age and relationship, when requested by the department;
- e. Sanitation and safety inspection reports, when requested by the department;
- f. Completed application form;
- g. Drug and alcohol evaluation, when requested by the department; and
- h. Licensing study report.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

#### 75-03-21-03. License.

1. Issuance of a license to operate a home indicates compliance with the required standards, rules, and laws at the time of issuance.
2. A license is nontransferable.
3. A license is valid only for the person or persons named and the premises described on the license.
4. A license is valid for no more than twelve months after the date issued.
5. A provider may obtain both an adult family foster care home license and a license as a family foster care home for children, but may not provide care to both adults and children simultaneously without prior written approval from the department.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

#### 75-03-21-04. Facility.

1. The home must conform to the requirements of section 101 of the life safety code published by the national fire protection association.
2. The home must be:

- a. Free of warped or damaged floors, loose or unsecured floor coverings, loose titles, broken or damaged windows, loose or broken handrails, broken light bulbs, and other such hazards that would affect the safety of an adult residing in the home;
  - b. Maintained free of offensive odors, vermin, and dampness;
  - c. Maintained by a central heating system at a temperature of at least sixty-eight degrees Fahrenheit [20 degrees Celsius];
  - d. Maintained so as to prevent crawling and flying pests from entering the home through windows;
  - e. Equipped with handrails in all stairways;
  - f. Equipped with nonporous surfaces for shower enclosures; and
  - g. Equipped with safety mats or slip-preventing materials on the bottom of tubs and floors of showers.
3. Bedrooms for all residents must be constructed as a bedroom with walls or partitions of standard construction which extend from floor to ceiling.
  4. Bedrooms occupied by one resident must have no less than seventy square feet [6.50 square meters] of usable floor space.
  5. Bedrooms occupied by two residents must have no less than one hundred twenty square feet [11.15 square meters] of usable floor space.
  6. Bedroom ceilings must be at least six feet and eight inches [203.20 centimeters] above the finished floor surface at the ceiling's lowest point.
  7. No more than two residents may be assigned to one bedroom.
  8. Bedrooms occupied by residents may not be located in a level of the home below grade level unless there are two means of egress, one of which leads to the outside of the home.
  9. At least one toilet and bathing facility must be available on the same floor as any bedroom occupied by a resident.
  10. The home must have a telecommunication device on the main floor available for use by residents.
  11. Mobile home units used as a home must:

- a. Have been constructed since 1976;
- b. Have been designed for use as a dwelling, rather than as a travel trailer;
- c. Meet the flame spread rate requirements; and
- d. Have a manufacturer's label permanently affixed stating the mobile home meets the requirements of the department of housing and urban development or the American national standards institute.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

#### 75-03-21-05. Sanitation.

1. Septic tanks or other nonmunicipal sewage disposal systems must comply with chapter 62-03-16, state plumbing code.
2. Rubbish, garbage, and other refuse must be stored in readily cleanable containers and removed from the home at least every second day. Rubbish, garbage, and other refuse kept outside of the home must be stored in readily cleanable, rodent-proof containers and disposed of weekly.
3. The home must be kept reasonable free of animal feces, urine, and hair.
4. Drinking water must be obtained from an approved community water system or from a source tested by a certified laboratory and approved by the state department of health and consolidated laboratories. A copy of the test report must be submitted to the department or its designee. The water and wastewater plumbing systems must comply with article 62-03, state plumbing code.
5. Milk must be obtained from an approved commercial source.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

#### 75-03-21-06. Safety.

1. Pets not confined in enclosures must not present a danger to a resident or the resident's guests based upon the size, temperament, or obedience of the pet.

2. The home must be located where a community or rural fire department is available.
3. Firearms must be stored, unloaded, in a locked cabinet. Any firearms cabinet must be located in an area of the home that is not readily accessible to residents.
4. Interior doors with a locking mechanism must be provided with a means to unlock the door from either side.
5. Heating units must be inspected for operability and safety at the time of the initial license application and periodically thereafter if requested by the department.
6. Food preparation areas, equipment, and food storage areas must be clean, free of offensive odors, and in sound working condition.
7. The home must be inspected by a local fire inspector or the state fire marshal at the time of initial license application and periodically thereafter if requested by the department. If structural changes are made in the home, the home must be reinspected.
8. Deficiencies noted during a fire inspection must be corrected within a reasonable time, but, in any event, must be corrected within sixty days after the issuance of the inspection report.
9. Any fees for the fire inspection or costs associated with correcting deficiencies noted during a fire inspection are the responsibility of the provider.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

#### 75-03-21-07. Insurance.

1. The provider must maintain adequate liability insurance, uninsured motorist coverage, and underinsured motorist coverage, according to the terms and conditions of North Dakota Century Code sections 39-16.1-11, 26.1-40-15.2, and 26.1-40-15.3, on all vehicles, operated by the provider or members of the provider's household, in which residents may be a passenger.
2. The provider must maintain a minimum household liability insurance coverage of one hundred thousand dollars and premises medical coverage of five hundred dollars per occurrence.

History: Effective May 1, 1992.



General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

75-03-21-08. Personal characteristics. The provider must:

1. Be twenty-one years of age or older.
2. Live in the home which is licensed for adult family foster care.
3. Possess the physical health necessary to aid residents with activities of daily living.
4. Be literate and capable of understanding and following written and oral instructions and communicating in the English language.
5. Be free of communicable diseases.
6. Be in good physical health, emotionally and functionally stable, and not abusing drugs or alcohol.
7. Not be the spouse of a resident receiving care in the home.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

75-03-21-09. General practices. The provider shall:

1. Permit a representative of the department, county agency, or other agency serving a resident entry into the home without prior notice.
2. Provide information about the residents to the department, county agency, or other agency serving a resident with reasonable promptness.
3. Report illness, hospitalization, or unusual behavior of a resident to the agency serving the resident, or to the resident's representative, whichever is appropriate.
4. a. Not permit a person, except for a resident, to reside in the home or act as a caregiver in the home, if that person has been convicted of an offense, unless:
  - (1) The department determines the person has been sufficiently rehabilitated; and

- (2) The person has not been convicted of an offense which has a direct bearing upon a person's ability to serve the public as a caregiver or occupier of a home.
  - b. Completion of probation or parole, or of a period of five years after final discharge or release from any term of imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
  - c. Theft crimes involving the theft of entrusted property, crimes involving any assault, and any crimes against persons where the victim or intended victim was a minor, infirm, incompetent, unconscious, intoxicated or under the influence of drugs, or a ward or a resident of the perpetrator's living quarters are deemed to have a direct bearing on a person's ability to serve the public as a caregiver or occupier of a home.
5. Assure that information related to the resident shall be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, related to an investigation or license review under this chapter, or authorized by the resident.
  6. Not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap.
  7. Be willing to accept direction, advice, and suggestions concerning the care of residents from the department, county agency, or other agency representative serving a resident.
  8. Assure that residents receiving care in the home are not subjected to physical abuse, sexual abuse, neglect, or exploitation.
  9. Undergo a medical examination, psychological evaluation, or drug and alcohol evaluation when requested by the department or county agency when there is reason to believe that such an examination or evaluation is reasonably necessary.
  10. Authorize the release of a report of any examination or evaluation, required under subsection 9, to the department or county agency.
  11. Immediately report changes in the identity or number of persons living in the home to the department or county agency.
  12. Immediately report an inability to carry out the parts of a care plan for which the provider is responsible to the monitoring agency and placing agency or person.

13. When requested by a supervising agency, aid the resident with activities of daily living.
14. Allow a representative of the department, or its designee, to enter the premises, examine the home and records maintained with respect to the residents, and interview the residents, provider, and caregivers in order to evaluate compliance with this chapter.
15. Cooperate with the department or county agency in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, county agency, ombudsman, or other authorized persons to the home and its residents.
16. Not retaliate against any resident, who has filed a complaint with the department or county agency, by taking away rights or privileges; threatening to take away rights or privileges; or by abusing or threatening to abuse a resident in any manner.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

#### 75-03-21-10. Substitute caregiver.

1. A substitute caregiver must:
  - a. Be eighteen years of age or older.
  - b. Not be a resident of the home.
  - c. Have a clear understanding of job responsibilities, have knowledge of residents' care needs, and be able to provide the care specified for each resident's needs.
2. The provider is responsible for the care of residents at all times, even though the duties or tasks of furnishing resident care have been delegated to a substitute caregiver.
3. Substitute caregivers may not be left in charge of the home for more than thirty calendar days during the twelve-month period immediately following the date of issuance of the license.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

#### 75-03-21-11. Meals and nutrition.

1. Three meals must be served daily.
2. There may be no more than fourteen hours between the conclusion of the evening meal and service of breakfast.
3. Each meal must be nutritious and well-balanced in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.
4. Adequate amounts of food shall be available at all meals.
5. The special dietary needs of the residents must be considered in all menu planning, food selection, and meal preparation.
6. Consideration must be given to residents' cultural, ethnic, and religious backgrounds in food preparation.
7. Meals must be regularly and routinely prepared in the home where the residents live.
8. Charges imposed for resident meals provided by persons or facilities other than the provider must be paid by the provider unless the provider made a meal available at the home.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

75-03-21-12. Preadmission information and house rules. The provider must furnish each prospective resident, or the resident's conservator, guardian, relative, or other person responsible for placement, the following information prior to entering the home:

1. Any restrictions and limitations on the use of alcohol and tobacco.
2. Any restrictions and limitations on the use of the telephone.
3. Sample menus of meals served.
4. Procedure concerning the use and management of resident funds.
5. Procedure used for billing and collecting the charge for board, room, and care.
6. Policies concerning the furnishing of nonemergency resident transportation by the provider.
7. A statement of other relevant house rules with which the resident will be expected to comply.

8. Accurate and complete information regarding the extent and nature of the care available from the provider.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

75-03-21-13. Termination of care.

1. The provider shall terminate care of a resident when such care is no longer required or no longer meets the needs and the best interests of the person receiving adult family foster care.
2. The provider who anticipates the termination of care to a resident must provide the resident and the resident's representative, if any, with at least thirty days' written notice of the termination, and must refer or transfer the resident to a setting more appropriate to the resident's needs.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

75-03-21-14. Action on license application. The department may deny or grant a license. A license may be granted subject to such reasonable limitations, restrictions, or conditions as the department may determine to be necessary and appropriate to assure safety and adequate care for residents for which application has been made.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

75-03-21-15. Bases for license action - Permitting operation after notice of revocation. The department may revoke or deny a license for any of the reasons permitted in law, or any combination of reasons. A revocation or denial based on more than one reason must be affirmed, on appeal, if the evidence supports any reason given for revocation or denial. A provider who receives a notice of revocation, and who makes a timely appeal of that notice, may continue to operate the home pending a final administrative appeal decision, unless the revocation is based

upon reasons which present an imminent danger to the health, welfare, or safety of residents receiving care in the home or unless the license expires.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

75-03-21-16. Denial or revocation of license. An application for a license may be denied or a license may be revoked if:

1. The license application or supporting documents contain fraudulent or untrue representations or if the license was otherwise issued based upon fraudulent or untrue representations;
2. The provider or proposed provider is in violation of this chapter or is unwilling to conform to this chapter;
3. The home, or the premises proposed for the home, fails to conform to this chapter;
4. The home, or the premises proposed for the home, is not in sanitary condition or properly equipped to provide good care for all residents who may be received;
5. The provider or proposed provider is not properly qualified to carry out the duties required;
6. The home, or the premises proposed for the home, is not being conducted or is not likely to be conducted for the public good in accordance with sound public policy and with due regard for the health, morality, and well-being of all residents cared for; or
7. The provider or proposed provider is not a reputable and responsible person.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

75-03-21-17. Distribution of notice of denial or revocation. A copy of a notice of revocation or a notice of denial of a license application may be provided to any resident, any person who resides in a place under circumstances which may require that place to be licensed as a home for care of that person, to any guardian, conservator, placement agency, or person making placement of such a resident or person, and to



any placement agency which has placed residents for care in the home or in other licensed homes in the region.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

75-03-21-18. Reapplication after denial or revocation. A provider or proposed provider whose license has been revoked or whose license application has been denied may not reapply, without the written permission of the department:

1. Until a final, unappealable determination has been made with respect to the denial or revocation; and
2. For two years after the date of an unappealed denial of a license application or an unappealed revocation of a license, or the date of a final, unappealable decision affirming the appealed denial of a license application or appealed revocation of a license, whichever occurs latest.

History: Effective May 1, 1992.

General Authority: NDCC 50-11

Law Implemented: NDCC 50-06-16, 50-11-03, 50-11-06.2

AGENCY SYNOPSIS: Article 75-07 Multicounty Social Service Districts.

This article was adopted for the purpose of describing the methods in which financial incentives for the creation of multicounty social service districts may be provided, and for the purpose of describing the manner of payment for costs incurred by counties in the development of multicounty social service districts, all as required by 1991 N.D. Sess. Laws ch. 506. Chapter 75-07-01 describes a process by which counties apply for approval of multicounty social service district plans and also apply for incentives. Chapter 75-07-02 concerns a method by which development costs associated with the development of a multicounty social service district plan may be reimbursed.

Chapter 75-07-01  
Multicounty Social Service District Applications  
for Approval and Incentives

Section 75-07-01-01, Definitions: Defines six terms used in the chapter.

Section 75-07-01-02, Application for Approval of Multicounty Social Service District Plan: Describes the required content of an application.

Section 75-07-01-03, Approval of Multicounty Social Service District Plan: Requires the department to approve conforming plans. Provides a time limit for departmental action.

Section 75-07-01-04, Application for Incentives: Provides for application for incentives to be included in the application for approval of the plan.

Section 75-07-01-05, Determination of Amount of Incentives: Describes the manner of calculating the amount of incentives.

Section 75-07-01-06, Payment of Incentives - Limitation: Describes the maximum amount of incentives and permits the department to suspend incentive payments if the goals described in the approved plan are not achieved.

Section 75-07-01-07, Extension of Incentives: Permits incentives to be continued when additional counties are added to an established district.

Section 75-07-01-08, Continuing and Phasing Out Incentives: Describes the amount of incentives, relative to the initial years incentives, for subsequent years. Limits the payment of incentives to a maximum of nine fiscal years.

Chapter 75-07-02  
Multicounty Social Service District Plans -  
Reimbursement of Development Costs

Section 75-07-02-01, Definitions: Defines three terms used in the chapter.

Section 75-07-02-02, Application for Reimbursement: Identifies who may make application for reimbursement of costs incurred in the development of multicounty social service district plan.

Section 75-07-02-03, Content of Application: Describes the required content of an application for reimbursement of development costs.

Section 75-07-02-04, Application Approval: Requires the department to approve completed applications within appropriations available. Limits the aggregate reimbursement to all counties participating in an application.

Section 75-07-02-05, Disapproval or Conditional Approval of Applications: Permits the department to return an application for correction of deficiencies. Requires the department to identify the deficiencies and to suggest appropriate corrections.

Section 75-07-02-06, Reimbursement by the Department: Requires the department to make reimbursement within limits of appropriations.

STAFF COMMENT: Article 75-07 contains all new material but is not underscored so as to improve readability.

ARTICLE 75-07

MULTICOUNTY SOCIAL SERVICE DISTRICTS

Chapter	
75-07-01	Multicounty Social Service District Applications for Approval and Incentives
75-07-02	Multicounty Social Service District Plans - Reimbursement of Development Costs

CHAPTER 75-07-01  
MULTICOUNTY SOCIAL SERVICE DISTRICT  
APPLICATIONS FOR APPROVAL AND INCENTIVES

Section	
75-07-01-01	Definitions
75-07-01-02	Application for Approval of Multicounty Social Service District Plan
75-07-01-03	Approval of Multicounty Social Service District Plan
75-07-01-04	Application for Incentives
75-07-01-05	Determination of Amount of Incentives
75-07-01-06	Payment of Incentives - Limitation
75-07-01-07	Extension of Incentives
75-07-01-08	Continuing and Phasing Out Incentives

75-07-01-01. Definitions. As used in this chapter, unless the context or subject matter requires otherwise:

1. "County" means the board of county commissioners.
2. "County agency" means the county social service board.
3. "Department" means the department of human services.
4. "District" means a multicounty social service district.
5. "Plan" means a plan for the creation of a multicounty social service district.
6. "Services" includes both social and economic assistance services.

History: Effective May 1, 1992.  
General Authority: NDCC 50-01.1-02.1  
Law Implemented: NDCC 50-01.1-02.1

75-07-01-02. Application for approval of multicounty social service district plan. An application for approval of a multicounty social service district plan must:

1. Assure that the affected county agencies are able to supply an adequate level and quality of social and economic assistance services. Assurances made under this subsection must:
  - a. Describe the number and qualifications of the staff of the affected county agencies;
  - b. Identify the number and types of cases handled by the affected county agencies; and
  - c. Demonstrate that appropriate staffing standards will be met under the plan.
2. Include a description of the geographical area and population to be served under the plan.
3. Include a description of the distance of recipients from the affected county agencies.
4. Include a description of the benefits which may be realized from the creation of the district, including:
  - a. A statement of costs anticipated to be incurred if the plan is not approved and to be incurred if the plan is approved, including a budget detailing estimated total costs and estimated county, state, and federal share of total costs.
  - b. A statement describing any changes in the availability of services, any new services that will be provided, any existing service that will be discontinued, and any improvement in services under the plan.
5. Assure that necessary staff reductions will be made insofar as is reasonably possible through voluntary retirements, voluntary transfers, and elimination of vacant positions, and further assure that displaced staff persons are afforded an opportunity to transfer to available positions within offices operated by the district.
6. Conform to the requirements of subsection 1 of North Dakota Century Code section 50-01.1-04.

7. Include a statement of any definite term of operation or of the terms under which the plan will be rescinded or terminated.

History: Effective May 1, 1992.

General Authority: NDCC 50-01.1-02.1

Law Implemented: NDCC 50-01.1-02.1

75-07-01-03. Approval of multicounty social service district plan. The department may approve any multicounty district plan which conforms to the requirements of section 75-07-01-02. Within ninety days after receipt of an application for approval of a multicounty social service district plan, the department must approve or deny the application or request additional information. If additional information is requested, the department must approve or deny the application within ninety days after the requested information is received by the department. The department may suggest changes in the application at any time prior to approval of the application. Any approval, denial, request for information, or suggested change must be made in writing, or promptly reduced to writing, and mailed to the counties which are included in the proposed district. Any notice of denial must advise the counties included in the proposed district of the right to appeal.

History: Effective May 1, 1992.

General Authority: NDCC 50-01.1-02.1

Law Implemented: NDCC 50-01.1-02.1

75-07-01-04. Application for incentives. A district or a proposed district may apply for financial incentives for the creation of a multicounty social service district. The application must be included in the plan submitted pursuant to section 75-07-01-03. The application for incentives may be stated generally, or may state specific amounts and set out specific purposes for which incentive funds are to be used.

History: Effective May 1, 1992.

General Authority: NDCC 50-01.1-02.1

Law Implemented: NDCC 50-01.1-02.1

75-07-01-05. Determination of amount of incentives.

1. The department shall determine an initial annual incentive amount which does not exceed eighty percent of the county share of:
  - a. Salary, fringe benefits, travel, and per diem costs for any staff member who works on behalf of two or more counties and who spends no more than seventy-five percent of his or her work time on behalf of any one county.

- b. Salary, travel, and per diem costs of the governing board of the district.
2. The department may determine an additional incentive payment which does not exceed fifty percent of the county share of the cost of equipment purchases where the purchased equipment will be used by, or used to provide benefits to, two or more counties in the district. The additional incentive for equipment may not be included in determining the initial annual incentive amount for purposes of section 75-07-01-08.

History: Effective May 1, 1992.  
General Authority: NDCC 50-01.1-02.1  
Law Implemented: NDCC 50-01.1-02.1

75-07-01-06. Payment of incentives - Limitation. The department may pay incentives to a district, or one or more counties in proposed district, upon claim being made therefor, and within the limits of legislative appropriation and this chapter. Financial incentives made available to a district, or to the counties in a proposed district under this chapter, may not exceed an amount approved by the department or forty thousand dollars per biennium, whichever is less. In the event that a district or proposed district fails to achieve goals described in an approved plan, by the dates or events prescribed for the achievement of those goals, the department may suspend incentive payments until the goals are achieved or may terminate incentive payments.

History: Effective May 1, 1992.  
General Authority: NDCC 50-01.1-02.1  
Law Implemented: NDCC 50-01.1-02.1

75-07-01-07. Extension of incentives. Incentives may be continued for more than six years to promote appropriate expansion of established districts. An expansion requires the addition of at least one county to an established district. If a county is added at any time during a period when a district is receiving incentives under this chapter, the department may extend the period of incentives for up to three years, and may increase the incentive amount if the limitations of section 75-07-01-06 have not been exceeded. A district which seeks to add a county or counties must submit an amended multicounty social service district plan which conforms to the requirements of section 75-07-01-02. No extension may be granted unless the department first approves the amended multicounty district plan.

History: Effective May 1, 1992.  
General Authority: NDCC 50-01.1-02.1  
Law Implemented: NDCC 50-01.1-02.1



75-07-01-08. Continuing and phasing out incentives.

1. Except as provided in subsections 2 and 3, incentives may be provided in the following amounts:
  - a. First, second, and third fiscal years - one hundred percent of the initial annual incentive amount.
  - b. Fourth fiscal year - seventy-five percent of the initial annual incentive amount.
  - c. Fifth fiscal year - fifty percent of the initial annual incentive amount.
  - d. Sixth fiscal year - twenty-five percent of the initial annual incentive amount.
2. If incentives are extended, the amount of extended incentives is determined by multiplying the incentive determined under subsection 1:
  - a. In the first, second, and third fiscal years after the addition of a county or counties, by the initial annual incentive amount which would be determined if the amended multicounty social service district plan were an initial multicounty social service district plan;
  - b. In the fourth year after the addition of a county or counties, by seventy-five percent of the initial annual incentive amount which would be determined if the amended multicounty social service district plan were an initial multicounty social service district plan;
  - c. In the fifth year after the addition of a county or counties, by fifty percent of the initial annual incentive amount which would be determined if the amended multicounty social service district plan were an initial multicounty social service district plan; and
  - d. In the sixth year after the addition of a county or counties, by twenty-five percent of the initial annual incentive amount which would be determined if the amended multicounty social service district plan were an initial multicounty social service district plan.
3. Notwithstanding any other provision of this section, no incentive payments may be made to a district after the ninth fiscal year after the fiscal year for which the initial incentive was paid.

History: Effective May 1, 1992.

General Authority: NDCC 50-01.1-02.1

Law Implemented: NDCC 50-01.1-02.1

CHAPTER 75-07-02  
MULTICOUNTY SOCIAL SERVICE DISTRICT PLANS -  
REIMBURSEMENT OF DEVELOPMENT COSTS

Section	
75-07-02-01	Definitions
75-07-02-02	Application for Reimbursement
75-07-02-03	Content of Application
75-07-02-04	Application Approval
75-07-02-05	Disapproval or Conditional Approval of Applications
75-07-02-06	Reimbursement by the Department

75-07-02-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Application" means a written request of two or more counties for reimbursement of actual costs incurred in the development of a multicounty social service district plan.
2. "County" means the board of county commissioners.
3. "Department" means the department of human services.

History: Effective May 1, 1992.  
General Authority: NDCC 50-01.1-02.1  
Law Implemented: NDCC 50-01.1-02.1

75-07-02-02. Application for reimbursement. The boards of county commissioners of two or more counties may jointly make application to the department for payment of reimbursement for actual costs incurred in the development of a multicounty social service district plan. The application must be signed by the chairman of each board seeking reimbursement for district plan development and be supported by an authorizing resolution from each board joining in the application.

History: Effective May 1, 1992.  
General Authority: NDCC 50-01.1-02.1  
Law Implemented: NDCC 50-01.1-02.1

75-07-02-03. Content of application. The application must contain:

1. Estimated expenditures for plan development, including anticipated costs for salary, consultative fees, travel, per diem, information services, supplies, and equipment;
2. Proposed beginning and ending dates during which plan development will occur;

3. A proposal for allocation of plan development costs among the participating counties;
4. An estimate of the total reimbursement each participating county will claim from the department;
5. The name, address, and phone number of a person designated by the boards of county commissioners to function in a plan development coordination capacity;
6. A statement of the purposes for which each participating county is interested in pursuing the creation of a multicounty social service district; and
7. A commitment by each participating county that the plan for the creation of the multicounty social service district will be developed by a specified date.

History: Effective May 1, 1992.

General Authority: NDCC 50-01.1-02.1

Law Implemented: NDCC 50-01.1-02.1

75-07-02-04. Application approval. The department, upon receipt of a completed application and within appropriations available therefor, may approve the application. The aggregate reimbursements to all counties participating in an application may not exceed ten thousand dollars or the estimate of total reimbursement contained in the application, whichever is less.

History: Effective May 1, 1992.

General Authority: NDCC 50-01.1-02.1

Law Implemented: NDCC 50-01.1-02.1

75-07-02-05. Disapproval or conditional approval of applications. Any application disapproved or conditionally approved by the department, subject to the correction of deficiencies, must be returned to each of the counties participating in the application with a specification of the reasons for disapproval or a listing of deficiencies that must be corrected prior to the receipt of unqualified approval. The department may suggest appropriate corrections.

History: Effective May 1, 1992.

General Authority: NDCC 50-01.1-02.1

Law Implemented: NDCC 50-01.1-02.1

75-07-02-06. Reimbursement by the department. Within the limits of legislative appropriations therefor, and subject to the limitations in section 75-07-02-04, the department shall reimburse each county participating in an approved application, upon claim being made therefor

by the county, for the actual costs incurred in the development of a multicounty social service district plan.

History: Effective May 1, 1992.

General Authority: NDCC 50-01.1-02.1

Law Implemented: NDCC 50-01.1-02.1



TITLE 82

Teachers' Fund for Retirement, Board of Trustees of the





MAY 1992

82-02-01-01. Definitions. Unless made inappropriate by context, all words used in this title have the meanings given to them under North Dakota Century Code chapter 15-39.1. The following definitions are not established by statute and apply for the purpose of this title:

1. "Account balance" or "value of account" means the teacher's assessments plus interest compounded annually.
2. "Benefit service" means employment service used to determine benefits payable under the fund.
3. "Covered employment" means employment as a teacher.
4. "Participating employer" means the employer of a teacher.
5. "Salary reduction or salary deferral amounts under U.S.C. 125, 401(k), 403(b), or 457" means amounts deducted from a member's salary, at the member's option, to a qualified section 125 cafeteria plan, 401(k) plan, 403(b) plan, or a 457 plan. Amounts contributed to a qualified section 125, 401(k), 403(b), or a 457 plan by the employer cannot be counted as retirement salary.
6. "Vested" means the status attained by a teacher when the teacher has paid assessments for a period of five years for covered employment in this state.

History: Effective September 1, 1990; amended effective May 1, 1992.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1, 15-39.1-07

82-03-01-04. Repurchase of forfeited service credit. An individual who has forfeited service credit under section 82-03-01-03

may repurchase such service upon return returning to teaching teach or becoming an active dual member in accordance with the following:

1. The teacher must have earned at least one year of benefit service credit following the return to teaching. If the repurchase payment is made within five years from the date of initial eligibility, the repurchase cost must be the amount withdrawn plus interest.
2. If the repurchase payment is made within five years from the date of initial eligibility, the repurchase cost must be the amount withdrawn plus interest. If the repurchase payment is not made within five years, the cost of the remaining service credit will be calculated on an actuarial equivalent basis. The board may allow the repurchase to be made on a monthly, quarterly, semiannual, or annual basis. Interest is calculated from the date the teacher's account balance is refunded. An active member of the public employees retirement system or the highway patrol retirement system may repurchase withdrawn service credit from the fund. If the repurchase is made within five years from the date of initial eligibility or July 1, 1987, the repurchase cost must be the amount withdrawn plus interest.
3. If the repurchase payment is not made within five years, the cost of the remaining service credit will be calculated on an actuarial equivalent basis.
4. The cost may be paid in a lump sum or in installments. Installments may be made monthly, quarterly, semiannually, or annually for up to five years. Interest is charged on the unpaid balance.
- 3- 5. If a teacher retires prior to full payment of the repurchase amount, service credit will be granted in proportion to the actual payments made or the teacher may elect to make a lump sum payment to complete the purchase or elect to have the payments included in a refund of the account balance.

History: Effective September 1, 1990; amended effective May 1, 1992.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC ~~15-39.1-15~~ 15-39.1-24

82-03-01-05. Purchase of benefit service credit. A teacher may purchase additional eligible benefit service credit in accordance with the following:

1. Out-of-state teaching service must be verified by the out-of-state retirement system under which the service was earned.

2. Military service must be verified by submitting military service discharge documents.
3. Professional education time must be verified by submitting an official transcript from the educational institution attended.
4. Nonpublic teaching service must be certified by the nonpublic employer.
5. Legislative service must be certified by the teacher's participating employer and must indicate the number of uncompensated days and salary information as required by the fund.
6. Service as a federal administrator or teacher must be verified by the federal agency which employed the teacher.

In all cases, the purchase cost must be on an actuarial equivalent basis determined by applying the actuarial factors adopted by the board.

The cost may be paid in a lump sum or in installments. Installments may be made monthly, quarterly, semiannually, or annually for up to five years. Interest is charged on the unpaid balance at the actuarial assumption rate for investment earnings.

If a teacher retires prior to full payment of the purchase amount, service credit will be granted in proportion to the actual payments made, or the teacher may elect to make a lump sum payment to complete the purchase or elect to have the payments included in a refund of the account balance.

History: Effective September 1, 1990; amended effective May 1, 1992.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-24

82-03-01-06. Veterans' Reemployment Rights Act. A member may purchase service credit for military service under Veterans' Reemployment Rights Act provided that the military service interrupted teachers' fund for retirement covered employment and an honorable discharge was received.

Veterans eligible to purchase service credit for this military time must apply for and purchase that time prior to retirement. The purchase of this additional service credit must be in accordance with the following:

1. Member shall provide teachers' fund for retirement with an official copy of military discharge papers (i.e., DD214) as proof of eligibility.
2. Cost may be paid in a lump sum or under an installment agreement (section 82-03-01-05).

3. The employer, at the time the member enters eligible military, is responsible for the employer contributions.
4. All retired members who are eligible to purchase under Veterans' Reemployment Rights Act may purchase this service time. Benefits will be adjusted the month following the completion of the purchase.

All eligible members for Veterans' Reemployment Rights Act who have purchased the service under section 82-03-01-05 or previous teachers' fund for retirement board policies are eligible for a refund of the overpaid amount plus interest on the overpayment made.

History: Effective May 1, 1992.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-24, 15-39.2-01.2; 38 USC 2021-2026

82-05-01-04. Proof of marriage. A teacher applying for a retirement benefit with a continuing annuity under the joint and survivor option must provide proof of marriage.

History: Effective May 1, 1992.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-10

82-08-01-02. Qualified domestic relations order procedures. Upon receipt of a domestic relations order, the ~~executive director~~ retirement officer shall:

1. Send an initial notice to each person named therein, together with an explanation of the procedures followed by the fund.
2. If the account is in pay status or begins pay status during the review, segregate in a separate account of the fund or in an escrow account amounts which the alternative payee would be entitled to by direction of the order, if any.
3. Review the domestic relations order to determine if it is a qualified order.
4. If the order is determined to be qualified within eighteen months of receipt:
  - a. Send notice to all persons named in the order and any representatives designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.
  - b. Comply with the terms of the order.

- c. Distribute the amounts, plus interest, to the alternate payee if a segregated account or an escrow account has been established for an alternate payee.
5. In the event that the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such order:
  - a. Send written notification of such to all parties.
  - b. Distribute the amounts in the segregated account or escrow account, plus interest, to the person or persons who would be entitled to receive such amount in the absence of an order if a segregated account or an escrow account has been established for an alternate payee.
  - c. Apply the qualified domestic relations order prospectively only if determined after the expiration of the eighteen-month period the order as modified, if applicable, is a qualified domestic relations order.

History: Effective September 1, 1990; amended effective May 1, 1992.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-12.2





TITLE 93

Private Investigative and Security Board



MAY 1992

93-02-01-08. Bonding Surety requirements.

1. Before a private investigator's investigator license can be issued to any an applicant, that applicant must file with the board a bond, irrevocable letter of credit, or certificate of insurance executed by the applicant and by a surety company to be approved by the board or insurance company in the sum of five thousand dollars, in a form prescribed by the board dollar bond, ten thousand dollar letter of credit, or one hundred thousand dollars of general liability with errors and omissions insurance.
  
2. Before a detective agency license can be issued, the applicant must file with the board a bond, irrevocable letter of credit, or certificate of insurance executed by the applicant and a surety company to be approved by the board in an amount determined by the number of persons employed or hired to do private investigative service work for the detective agency, in a form prescribed by the board or an insurance company in the amount of ten thousand dollar bond, ten thousand dollar letter of credit, or one hundred thousand dollars of general liabilities with errors and omissions insurance.

The amount of the detective agency bond is determined by the following schedule:

1 - 5 employees .....	\$ 7,500.
6 - 10 employees .....	\$10,000.
11 - 20 employees .....	\$15,000.
21 or more employees .....	\$20,000.

A new bond or appropriate bond rider must be executed and filed with the board at any time the number of employees

exceeds the maximum number of any given category as described above.

3. The bond executed pursuant to subsections 1 and 2, irrevocable letter of credit, or certificate of insurance must be conditioned for the faithful and honest conduct of the business of the applicant and the applicant's agents and employees, and for the full protection of any person who deals with the applicant or the applicant's agents and employees. The bond must be taken in the name of the people of the state of North Dakota and must provide that any person injured by the breach of the conditions of the bond may bring an action on the bond, irrevocable letter of credit, or certificate of insurance must provide that any person injured by the breach of the conditions of the bond, irrevocable letter of credit, or insurance policy may bring an action on that bond, irrevocable letter of credit, or insurance policy in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the surety bond, irrevocable letter of credit, or insurance policy, for all damages may, in no event, exceed the sum of the bond, irrevocable letter of credit, or insurance policy. The surety on the bond or insurance underwriter may cancel the bond or policy upon giving thirty days' notice in writing to the board and thereafter is relieved of liability for any breach of condition occurring after the effective date of the cancellation.

History: Effective March 1, 1990; amended effective May 1, 1992.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

93-02-01-12. Out-of-state private investigators.

1. Any agency or individual who solicits or provides private investigative services within the boundaries of this state must be licensed by the board of this state.
2. Any ongoing investigation that originates outside of this state can be continued in this state providing it can be concluded within thirty calendar days. Under these conditions no license or registration will be required provided the investigator is licensed in the investigator's home state and provided that state recognizes similar reciprocity from North Dakota licensed investigators.

History: Effective March 1, 1990; amended effective effective May 1, 1992.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-05



93-02-02-15. Bonding Surety requirements.

1. Before a private security license can be issued to an applicant, the applicant ~~shall~~ must file with the board a bond, irrevocable letter of credit, or certificate of insurance executed by the applicant and a surety company to be approved by the board or insurance company in the sum of five thousand dollars in a form prescribed by the board dollar bond, ten thousand dollar letter of credit, or one hundred thousand dollars of general liability with errors and omissions insurance.
  
2. Before a private security agency license can be issued, the applicant ~~shall~~ must file with the board a bond, irrevocable letter of credit, or certificate of insurance executed by the applicant and a surety company to be approved by the board in an amount determined by the number of persons employed or hired to do private security service work for the agency, in a form prescribed by the board or an insurance company in the amount of ten thousand dollar bond, ten thousand dollar letter of credit, or one hundred thousand dollars of general liabilities with errors and omission insurance.

† - 5 employees	. . . . .	\$ 7,500.
6 - 10 employees	. . . . .	<del>\$10,000.</del>
†† - 20 employees	. . . . .	<del>\$15,000.</del>
2† or more employees	. . . . .	<del>\$20,000.</del>

A new bond or appropriate bond rider must be executed and filed with the board at any time the number of employees exceeds the maximum number in any given category as described in this subsection.

3. The bond executed pursuant to subsections † and 2, irrevocable letter of credit, or certificate of insurance must be conditioned for the faithful and honest conduct of the business of the applicant, and the applicant's agents and employees, and for the full protection of any person who deals with the applicant for the applicant's agents and employees. The bond must be taken in the name of the people of the state of North Dakota and must provide that any person injured by the breach of the conditions of the bond may bring an action on the bond, irrevocable letter of credit, or certificate of insurance must provide that any person injured by the breach of the conditions of the bond, irrevocable letter of credit, or insurance policy may bring an action on that bond, irrevocable letter of credit, or insurance policy in the name of the state of North Dakota for the use of the person so injured to recover legal damages suffered by reason of breach of the conditions; provided, however, that the aggregate liability of the surety bond, irrevocable letter of credit or insurance policy, for all damages, may, in no event, exceed the sum of the bond, irrevocable letter of credit, or



insurance policy. The surety ~~on the bond~~ or insurance  
underwriter may cancel the bond or policy upon giving thirty  
days' notice in writing to the board and thereafter is  
relieved of liability for any breach of condition occurring  
after the effective date of the cancellation.

History: Effective March 1, 1990; amended effective May 1, 1992.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

TITLE 95

Agricultural Products Utilization Commission



MAY 1992

STAFF COMMENT: Articles 95-03 and 95-04 contain all new material but are not underscored so as to improve readability.

ARTICLE 95-03

COOPERATIVE MARKETING GRANT PROGRAM

Chapter  
95-03-01 Cooperative Marketing Grant

CHAPTER 95-03-01  
COOPERATIVE MARKETING GRANT

Section	
95-03-01-01	Purpose
95-03-01-02	Criteria
95-03-01-03	Miscellaneous

95-03-01-01. Purpose. Cooperative marketing grants may be used by a group of individuals or an individual on behalf of a group to market a product or formulate or implement a marketing plan for products which have not been marketed through existing marketing cooperatives.

History: Effective May 1, 1992.  
General Authority: NDCC 4-14.1-03.1  
Law Implemented: NDCC 4-14.1-03.1

95-03-01-02. Criteria. In addition to the requirements of article 95-02, proposals for a cooperative marketing grant will be evaluated as follows:

1. Preference will be given to principals who are individuals rather than existing corporations.
2. Proof of a cooperative agreement, either formal or informal, must be provided to the commission.
3. Proposals should provide an outlet for products normally not marketed through existing marketing cooperatives.
4. A well-researched, feasible marketing plan for the specific crop, livestock, or on-farm, value-added processing must be included in the proposal.
5. In lieu of the requirements of chapter 95-02-03, applicants must submit proposals on forms prescribed by the commission.

History: Effective May 1, 1992.

General Authority: NDCC 4-14.1-03.1

Law Implemented: NDCC 4-14.1-03.1

95-03-01-03. Miscellaneous.

1. Applicants are encouraged to seek professional assistance in plan preparation. No more than ten percent of the total grant may be spent for professional services.
2. Plans will be considered on an individual basis and on their own merits.

History: Effective May 1, 1992.

General Authority: NDCC 4-14.1-03.1

Law Implemented: NDCC 4-14.1-03.1

## ARTICLE 95-04

### FARM DIVERSIFICATION GRANT PROGRAM

Chapter

95-04-01

Farm Diversification Grants

CHAPTER 95-04-01  
FARM DIVERSIFICATION GRANTS

Section	
95-04-01-01	Purpose
95-04-01-02	Criteria
95-04-01-03	Disbursements
95-04-01-04	Miscellaneous

95-04-01-01. Purpose. Farm diversification grants must be used for the diversification of a family farm to nontraditional crops or livestock or on-farm, value-added processing. Traditional crops and livestock are those for which statistics are kept by the North Dakota agricultural statistic service.

History: Effective May 1, 1992.  
General Authority: NDCC 4-14.1-03.1  
Law Implemented: NDCC 4-14.1-03.1

95-04-01-02. Criteria. In addition to the requirements of article 95-02, proposals for a farm diversification grant will be evaluated as follows:

1. Proposals will usually be judged on traditional and nontraditional grant request guidelines, but the proposal does not necessarily need to be a new crop, stock, or value-added processing venture.
2. Proposals must have the potential to create additional income for the farm unit.
3. Proposals must demonstrate a well-researched plan. This includes exploration and research of possible markets for the product and possible income.
4. Proposals must contain new and innovative plans for marketing the product.
5. In lieu of the requirements of chapter 95-02-03, applicants must submit proposals on forms prescribed by the commission.

History: Effective May 1, 1992.  
General Authority: NDCC 4-14.1-03.1  
Law Implemented: NDCC 4-14.1-03.1

95-04-01-03. Disbursements.

1. Upon approval of the proposal, applicants will immediately receive one-third of the total grant amount to use for further



investigation into the financial feasibility of the proposed project.

2. An additional one-third of the total grant amount will be disbursed upon approval by the commission of an interim report detailing the operating plan. Requirements for the operating plan are as follows:
  - a. An itemized list of physical quantities and prices of inputs for each of the direct costs in the operating plan.
  - b. An itemized list of projected building, machinery and equipment, and land required and the estimated cost of each component.
  - c. An estimate of marketing costs.
3. Upon submission of a final written report describing the work performed, the results obtained, and an itemized list of quantities purchased and owner-supplied materials, a final release of the grant funds will be issued. The final report must be supplemented by a financial report detailing all expenses actually incurred and income generated by the project.

History: Effective May 1, 1992.

General Authority: NDCC 4-14.1-03.1

Law Implemented: NDCC 4-14.1-03.1

#### 95-04-01-04. Miscellaneous

1. Applicants are encouraged to seek professional assistance in project preparation. No more than ten percent of the total grant may be spent for professional services.
2. Plans will be considered on an individual basis and on their own merits.
3. Generally, grants will not exceed five thousand dollars per application.

History: Effective May 1, 1992.

General Authority: NDCC 4-14.1-03.1

Law Implemented: NDCC 4-14.1-03.1

TITLE 99  
State Gaming Commission



APRIL 1992

STAFF COMMENT: Title 99 contains all new material but is not underscored so as to improve readability.

ARTICLE 99-01

GAMES OF CHANCE

Chapter	
99-01-01	Organization of Commission
99-01-02	Definitions
99-01-03	Eligible Organizations
99-01-04	Licensing Qualifications for Organizations
99-01-05	General Rules
99-01-06	General Accounting Rules
99-01-07	Work Permits
99-01-08	Bingo
99-01-09	Raffles
99-01-10	Charitable Gaming Tickets and Punchboards
99-01-11	Professional Sports Pools
99-01-12	Twenty-One
99-01-13	Poker
99-01-14	Calcuttas
99-01-15	Paddlewheels
99-01-16	Electronic-Mechanical Charitable Gaming Ticket Dispensing Devices
99-01-17	Gaming Tax and Tax Returns
99-01-18	Eligible Uses
99-01-19	Audit, Violations, and Investigations
99-01-20	Distributors
99-01-21	Manufacturers of Charitable Gaming Tickets
99-01-22	Manufacturers of Paper Bingo Cards
99-01-23	Gaming Schools

CHAPTER 99-01-01  
ORGANIZATION OF COMMISSION

Section  
99-01-01-01                    Organization of State Gaming Commission

99-01-01-01.    Organization of state gaming commission.

1. **History.** The 1991 legislative assembly enacted legislation providing for a state gaming commission to adopt administrative rules governing the administration, regulation, and enforcement of games of chance. The commission may impose monetary fines on licensed organizations, distributors, and manufacturers for failure to comply with any provision of North Dakota Century Code chapter 53-06.1 and any rule adopted under that chapter. The commission may, by motion based on reasonable grounds or on written complaint, suspend or revoke a distributor's or manufacturer's license for violation, by the licensee or any officer, director, agent, member, or employee of the licensee, of North Dakota Century Code chapter 53-06.1 or any rule adopted under that chapter. These enactments are codified in North Dakota Century Code chapter 53-06.1.
2. **Commission membership.** The commission consists of the chairperson and four other members appointed by the governor, with the consent of the senate. The appointed members of the commission serve three-year terms and until a successor is appointed and qualified. The terms of the commissioners are staggered so that one term expires each July first.
3. **Membership eligibility.** A person is eligible for appointment to the commission if the person has been a resident of North Dakota for at least two years before the date of appointment. The person must be of such character and reputation so as to promote public confidence in the administration of gaming and not have a financial interest in gaming.
4. **Office and employees.** The commission has no office or employees. However, the commission may employ private counsel for adoption of rules and to ensure that its hearings are conducted fairly. The office of attorney general provides assistance to the commission.
5. **Inquiries.** Inquiries regarding the commission may be addressed to the chairperson:

Mr. Rick Maixner  
Chairperson  
State Gaming Commission

c/o Office of Attorney General  
600 East Boulevard Avenue  
Bismarck, ND 58505

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-01.2, 53-06.1-03,  
53-06.1-14, 53-06.1-17

CHAPTER 99-01-02  
DEFINITIONS

Section  
99-01-02-01 Definitions

99-01-02-01. 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 a game is dealt.
4. "Attorney general" includes agents of the attorney general.
5. "Bet" in poker means a player's wager to the pot on any betting round.
6. "Bingo session" means a single gathering at which a series of one or more successive bingo games is played.
7. "Blackjack" - see "natural twenty-one".
8. "Blind bet" in poker is a bet made before the first card of a game is dealt.
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. The value of a marketable security is its face value.
13. "Charitable gaming ticket" - refer to subsection 3 of North Dakota Century Code section 53-06.1-01. It is synonymous with pull-tab.
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 prizes.
18. "Civic and service club" - refer to subsection 5 of North Dakota Century Code section 53-06.1-01.
19. "Class A license" means a license classification assigned to an eligible organization that is prohibited because of its primary purpose for existence from expending net proceeds for the organization's own purposes or benefit and is required to disburse its net proceeds to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses. Such an organization does not meet the definition of a class B license. See "class B license".
20. "Class B license" means a license classification assigned to an eligible organization whose existence is to provide program services for its primary purpose evidenced by its articles of incorporation, not for a wide variety of uses or community interests. The primary purpose is an educational, charitable, patriotic, fraternal, religious, or other public-spirited use. The organization controls and manages the operation of its program services. The internal administrative operation of the organization is usually an integral part of the program services. The organization may own or maintain a facility for providing its program services.
21. "Commission" - refer to subsection 6 of North Dakota Century Code section 53-06.1-01.

22. "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.
23. "Compensation" means wages, salaries, bonuses, commissions, tips, benefits, and all other forms of remuneration for services rendered, including employer paid taxes.
24. "Conduct of games of chance" means the 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, paddlewheel tickets, bingo cards, redemption of charitable gaming tickets, dealing of twenty-one and poker, spinning a paddlewheel, calling of bingo numbers, recordkeeping, purchasing of equipment and supplies, counting cash, auditing games, making bank deposits, and paying of expenses and eligible use contributions. Conduct does not include the playing of any game of chance.
25. "Credit" in regard to an electronic-mechanical charitable gaming ticket dispensing device is the value of currency validated for purchasing a charitable gaming ticket by a player.
26. "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.
27. "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. Games of "club special", "tip board", and "seal 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.
28. "Dealer" in twenty-one is the general term for an organization's gaming employee or volunteer who a player bets against and performs the function of a dealer regardless of the time applied or assigned responsibility. "Dealer" in poker is the general term for the organization's gaming employee or volunteer who deals playing cards to players and performs the function of a dealer regardless of the time applied or assigned responsibility. "Dealer" in poker also is the general term for a player who deals playing cards to players.

29. "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.
30. "Deuce" in poker is the term for the two.
31. "Devoted" means a disbursement of net proceeds from the charitable gaming trust fund bank account or supplemental bank account to the ultimate use.
32. "Distributor" - refer to subsection 7 of North Dakota Century Code section 53-06.1-01.
33. "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 shall draw one and only one card.
34. "Draw" in the poker game of draw means the taking of additional cards by a player prior to the second round of betting.
35. "Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses" - refer to subsection 8 of North Dakota Century Code section 53-06.1-01.
36. "Educational organization" - refer to subsection 9 of North Dakota Century Code section 53-06.1-01.
37. "Electronic-mechanical charitable gaming ticket dispensing device" is a machine powered by electricity that contains a microprocessor, printed circuit board, accounting meters, and mechanical parts manufactured in accordance with section 99-01-16-02. It is designed to validate currency inserted by players and to vend charitable gaming tickets.
38. "Eligible organization" - refer to subsection 10 of North Dakota Century Code section 53-06.1-01.
39. "Entire net proceeds" or "net proceeds" - refer to subsection 11 of North Dakota Century Code section 53-06.1-01.
40. "Equipment" - see gaming equipment.
41. "Flare" is the posted display with the North Dakota state gaming stamp affixed which sets forth the rules and prizes of a specific series of paddlewheel ticket cards, punchboard, professional sports-pool board, calcutta board, commingled game of charitable gaming tickets, club special, tip board, and seal board. The flare for a game of paddlewheels described by subsections 1 and 2 of section 99-01-15-01 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.

42. "Flop" in the poker game of Texas hold'em means the first three community cards dealt faceup at one time.
43. "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.
44. "Fraternal organization" - refer to subsection 12 of North Dakota Century Code section 53-06.1-01.
45. "Gaming employee" is a person employed by a licensed organization or distributor to assist in, conduct, operate, participate in, promote, or manage gaming activity for compensation.
46. "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, electronic weigh scales, 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, paddlewheel, paddlewheel table, 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, electronic-mechanical charitable gaming ticket dispensing device, jar bar, paper-type and electronic punchboards, punchcard, raffle ticket, paddlewheel ticket, professional sports-pool board, calcutta board, deal of charitable gaming tickets, club special, tip board, and seal board.
47. "Gross proceeds" - refer to subsection 13 of North Dakota Century Code section 53-06.1-01.
48. "Hand" in poker means one game in a series, one deal, cards held by a player, or the best five cards of a player's holding.
49. "Hole-card":
  - a. In twenty-one is the second card dealt to a 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 a player which is unseen by the other players.

50. "Inside information" is any information about the status of a game of chance when that game is in play and that does or potentially could give a person an advantage over another person who does not have that information, 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 top tier and consolation winning tickets that the organization has not posted as provided by subdivision b of subsection 17 of section 99-01-10-03.
51. "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.
52. "Jar operator" in charitable gaming tickets is the general term for an organization's gaming employee or volunteer who sells charitable gaming tickets, pays a player for a winning charitable gaming ticket, makes a record of win, and performs the function of a jar operator regardless of the time applied or assigned responsibility.
53. "Last sale feature" is a prize offered on a commingled game of charitable gaming tickets, tip board, club special, and punchboard to the player who purchases the last charitable gaming ticket or punch of that game.
54. "Lessor" is the legal owner of a site or, if the site is leased to a person other than a licensed organization, is the person who has the responsibility and authority of a legal owner to operate a business at the site.
55. "Licensed alcoholic beverage establishment" means a lessor of a gaming site which provides limited assistance to an organization in the conduct of a game of charitable gaming tickets through the use of an electronic-mechanical charitable gaming ticket dispensing device at the leased gaming site.
56. "Licensed organization" means an organization issued a class A or class B license by the attorney general to conduct games of chance.
57. "Licensee" - refer to subsection 14 of North Dakota Century Code section 53-06.1-01.
58. "Licensing authority" - refer to subsection 15 of North Dakota Century Code section 53-06.1-01.

59. "Local permit" means a permit issued by a local governing body to an eligible organization, college fraternity, or sorority 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.
60. "Local work permit" means a document issued to a person by a local governing body that, in conjunction with a state work permit, authorizes the person to work as a gaming employee for a licensed organization, distributor, or licensed alcoholic beverage establishment in that city or county.
61. "Manufacturer" - refer to subsection 16 of North Dakota Century Code section 53-06.1-01.
62. "Master flare":
- a. In regard to a series of paddlewheel ticket cards:
    - (1) Designed and used for the game paddlewheels referenced by subsection 1 of section 99-01-15-01 describes the type of paddlewheel tickets in the series, states the cost per play of a paddlewheel ticket, lists the range of paddlewheel ticket card numbers in the series, and has a state gaming stamp affixed to it bearing the card number of the lowest numbered paddlewheel ticket card in the series.
    - (2) Designed and used for the game paddlewheels referenced by subsection 2 of section 99-01-15-01 describes the various wagers that may be placed according to a colored number or set of colored numbers, states the cost per play of a paddlewheel ticket, lists the range of paddlewheel ticket card numbers in the series, and has a state gaming stamp affixed to it bearing the card number of the lowest numbered paddlewheel 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, and number of prizes, by denomination.
63. "Member" - refer to subsection 17 of North Dakota Century Code section 53-06.1-01.
64. "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.
65. "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.
66. "Opener" in poker is the player who makes the first bet on any betting round.
67. "Operating" in the phrase "operating games of chance" of subsection 1 of section 99-01-07-03 includes, but is not limited to, a person who sells charitable gaming tickets, deals twenty-one or poker, conducts bingo as a bingo caller, floorworker, or cashier, or conducts paddlewheels as a wheel operator.
68. "Other public-spirited organization" - refer to subsection 18 of North Dakota Century Code section 53-06.1-01.
69. "Paddlewheel" is a mechanical vertical wheel marked off into equally spaced sections that contain numbers or symbols, and which after being spun, uses a pointer to indicate the winning numbers or symbol. It is used for the selection of a winner involving paddlewheel tickets.
70. "Paddlewheel ticket" is a preprinted detachable ticket of a paddlewheel ticket card that has printed on it a paddlewheel ticket card number and one or more numbers or symbols corresponding to the numbers or symbols on a paddlewheel.
71. "Paddlewheel ticket card":
- a. In regard to the game paddlewheels referenced by subsection 1 of section 99-01-15-01, means a preprinted card to which is attached paddlewheel tickets bearing all the numbers or symbols on a paddlewheel. A paddlewheel ticket card must have a stub attached that has preprinted on it a paddlewheel ticket card number and space for the winning number or symbol to be written in. Each paddlewheel ticket card must have a different and consecutive card number within the series of paddlewheel ticket cards.
  - b. In regard to the game paddlewheels referenced by subsection 2 of section 99-01-15-01, means a preprinted card to which is attached one or more paddlewheel tickets bearing up to sixty numbers of the paddlewheel and each available wager expressed by a colored number or set of colored numbers. A paddlewheel ticket card must have a

stub attached that has preprinted on it a paddlewheel ticket card number and spaces for the date, winning number or symbol, and prize amount paid to be written in. Each paddlewheel ticket card must have the cost per play for a paddlewheel ticket preprinted on it and a different and consecutive card number within the series of paddlewheel ticket cards.

72. "Paddlewheel ticket card number" means a game serial number preprinted by the manufacturer on a paddlewheel ticket card stub and each paddlewheel ticket card's paddlewheel tickets.
73. "Pat hand" in poker means a hand in draw poker which does not need another card drawn to it.
74. "Person" - refer to subsection 19 of North Dakota Century Code section 53-06.1-01.
75. "Player" in calcutta means a person who has wagered at an auction and has purchased a competitor.
76. "Pot" in poker is a location on a poker table. It also is referred to as the total amount anteed and bet by players during a game. The pot is awarded to the winning player.
77. "Primary game of chance" is the distinction of whether bingo is the principal game conducted on a 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.
78. "Raise" in poker means a bet in an amount greater than the immediately preceding bet of that betting round.
79. "Religious organization" - refer to subsection 20 of North Dakota Century Code section 53-06.1-01.
80. "Restricted gaming employee" is a person employed by a licensed alcoholic beverage establishment to provide limited assistance to an organization in the conduct of a game of charitable gaming tickets through the use of an electronic-mechanical charitable gaming ticket dispensing device at a leased gaming site.
81. "Round" in poker is the cycle when players make their bet following the deal of a card or cards.
82. "Shoe" in twenty-one means a card-dealing box, capable of holding at least two hundred eight playing cards.
83. "Showdown" in poker means the revealing of each player's hand by the player after the last bet to determine which player wins the pot.

84. "Site authorization" means an authorization issued by the local governing body to an organization which is eligible to conduct games of chance and which is required to have a class A or class B license.
85. "Stake" in poker means the value of chips with which a player enters a game.
86. "Supplies" means an item of a minor nature such as bingo daubers, bingo crayons, and glue sticks that are usable in the play of games of chance. An organization's revenue from the sale of these items is classified as nongaming revenue.
87. "Temporary work permit" means a document issued to a person by a licensed organization or distributor that, when validated by the organization or distributor, authorizes the person to work as a gaming employee for that organization or distributor, or as a restricted gaming employee for that organization in a licensed alcoholic beverage establishment, for forty-five calendar days from the date of issuance unless the temporary work permit is revoked, or until the person receives a work permit from the attorney general, whichever occurs first.
88. "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.
89. "Veterans organization" - refer to subsection 21 of North Dakota Century Code section 53-06.1-01.
90. "Volunteer", for the application of chapter 99-01-07, means a person who provides not more than twenty hours of personal service per month for a licensed organization or distributor without compensation. However, a volunteer may receive a gratuity or stipend not exceeding a total current retail value of ten dollars for a consecutive twenty-four-hour period, cash tips, and reimbursement for documented out-of-pocket expenses. No gratuity or stipend may be cash, be convertible into cash, or be a gift certificate redeemable for merchandise.
91. "Wheel operator" in paddlewheels is the general term for an organization's gaming employee or volunteer who sells paddlewheel chips, exchanges paddlewheel tickets for chips, spins the paddlewheel, pays off a player with chips for a winning paddlewheel ticket and performs the function of a wheel operator regardless of the time applied or assigned responsibility.
92. "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.

93. "Work permit" (state work permit) means a document issued to a person by the attorney general that authorizes the person to work as one of the following:
- a. Gaming employee for a licensed organization or distributor.
  - b. Restricted gaming employee for an organization in a licensed alcoholic beverage establishment.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-03, 53-06.1-17

#### CHAPTER 99-01-03 ELIGIBLE ORGANIZATIONS

Section

99-01-03-01	Purpose of Organization
99-01-03-02	Civic and Service Clubs
99-01-03-03	Other Public-Spirited Organizations
99-01-03-04	Processing of City and County Resolutions

99-01-03-01. Purpose of organization. An organization is ineligible to conduct games of chance if the sole purpose of the organization is to conduct those games of chance, whether or not the organization is carrying out that purpose for one or more otherwise eligible organizations. Therefore, an organization desiring to conduct games of chance 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-03-02. 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 disbursed 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 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 any other party.
3. A resolution passed by a city or county governing body recognizing an organization as a civic and service club must include the following information:
  - 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.
  - 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 granting a games of chance site authorization.
  - 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 8 of North Dakota Century Code section 53-06.1-01 and chapter 99-01-18.

- d. A statement of the organization's date of origin and 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 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.
  5. This section does not apply to a local permit. See subsection 6 of section 99-01-04-03.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

#### 99-01-03-03. Other public-spirited organizations.

1. For the purpose of administering subsection 18 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. 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 18 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, d, f, g, h, i, or l of subsection 8 of North Dakota Century Code section 53-06.1-01.
3. An organization whose primary purpose of being is consistent with subdivision i or j of subsection 8 of North Dakota Century Code section 53-06.1-01 must have one or more individuals affected by a specific event which has transpired prior to the application for a site authorization.



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 i or j of subsection 8 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.
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 i or j of subsection 8 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 disbursed 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 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. A resolution, passed by a 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 information:
  - 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, d, f, g, h, i, j, or l of subsection 8 of North Dakota Century Code section 53-06.1-01, which is consistent with the primary purpose of being of the organization.
  - 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 granting a games of chance site authorization.
  - 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 under subdivision c, d, f, g, h, i, j, or l of subsection 8 of North Dakota Century Code section 53-06.1-01 and chapter 99-01-18.
  - 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 a resolution states that the primary purpose of being of the organization is within subdivision h of subsection 8 of North Dakota Century Code section 53-06.1-01 (uses lessening the burden of government), it must also state either that the city or county (as applicable) operated and funded the project an 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 must be sent to the attorney general by the organization.
  8. An organization recognized by resolution as a public-spirited organization eligible to conduct games of chance under North Dakota Century Code chapter 53-06.1 shall devote net proceeds only to those eligible uses specifically outlined in the resolution.
  9. This section does not apply to a local permit. See subsection 6 of section 99-01-04-03.

History: Effective April 1, 1992.

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

99-01-03-04. Processing of city and county resolutions.

1. A copy of the "civic and service club" or "other public-spirited organization" resolution passed by a city or county governing body, along with copies of all the materials which must be examined by the local governing body under section 99-01-03-02 or 99-01-03-03, must be sent to the attorney general by the organization applying for a class A or class B license.
2. As the final licensing authority, the attorney general shall review the resolution, materials submitted with it, license application, and any other information concerning the organization. The attorney general may also examine any other material which the attorney general determines is necessary in order to process the application. If the attorney general determines that the determination made by the local governing body is not supported by the available facts, that the resolution does not meet the requirements of the law or is incorrect or inconsistent, that the local governing body has failed to undertake a sufficient examination of the organization or has acted in an arbitrary or capricious manner, or that any other requirement of the law has not been complied with, the attorney general shall return the resolution to the city or county governing body.
3. If, at any time after an organization has received a license to conduct games of chance, the attorney general determines that the organization's primary purpose of being is not consistent with the statement of its primary purpose of being contained in the resolution or that a use of net proceeds is outside the uses outlined in the resolution, the attorney general shall revoke the organization's license.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-02, 53-06.1-03, 53-06.1-17

CHAPTER 99-01-04  
LICENSING QUALIFICATIONS FOR ORGANIZATIONS

Section	
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Raffles - Local Permit by Local Governing  
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, by Local Governing Body Only

99-01-04-01. Licenses.

1. An organization eligible for a license must first receive a site authorization for a gaming site within a city from the city governing body or for a gaming site within a county, outside the city limits, from the county governing body. The organization shall then apply to the attorney general for a separate license for each city or county for which it holds a site authorization for a gaming site.
2. An 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 contain such information as the attorney general requires.
3. Class A and class B license applications are subject to approval by the attorney general. The attorney general may issue a temporary license, revocable on demand, pending review or investigation, or both, of an application.
4. Information provided on a license application by an 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 an organization commencing a game of chance after July first.

History: Effective April 1, 1992.

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

99-01-04-02. Site authorizations.

1. A site authorization is issued at the discretion of the city or county governing body. 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 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 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, the governing body 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. A 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. A governing body may issue a site authorization to two or more organizations to conduct games of chance at one specific location provided that the site authorizations restrict the two or more organizations to conduct games of chance on different days of the week.
6. If a specific occasion exists which does not exceed seven days, written approval is granted by the local governing body, and the rent amount does not increase, an organization may set up and use more twenty-one tables at a gaming site than a site authorization allows.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

#### 99-01-04-03. Local permits.

1. A local permit may be issued to an eligible organization and a college fraternity and sorority 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. A 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. An organization may be issued two or more local permits simultaneously provided that the award of prizes, in the aggregate, does not exceed the prize limitations of subdivision d of subsection 1 of section 99-01-04-08 and subdivision d of subsection 1 of section 99-01-04-09.
  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. A local governing body shall adopt a resolution recognizing an eligible organization as a "public-spirited organization". The local governing body, at its discretion, may prescribe the information to be contained in the resolution. The local governing body does not need to send a copy of the resolution to the attorney general.
  7. When a local governing body issues a local permit to a recognized "public-spirited organization" to conduct only bingo, raffles, and professional sports pools, the local governing body shall assign a local permit number to the organization and 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03, 53-06.1-05, 53-06.1-17

99-01-04-04. Closely connected organizations prohibited.

1. An organization 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. The authorization must be based on conditions set by the attorney general. However, a college



fraternity and sorority that may receive a local permit 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 tax, or both, is prohibited.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-04-05. License application information. An application must be on a form prescribed by the attorney general and contain such information as the attorney general requires. The application must include at least the information required by this section except that the information required by subsections 6 and 7 only needs to be provided with the initial application.

1. Acknowledgment of local law enforcement. An eligible organization shall notify the city chief of police for the intended site within city limits, or county sheriff for the intended site outside city limits, at which games of chance are to be conducted and obtain local law enforcement acknowledgment. The organization shall also consent in advance that local law enforcement officials and the attorney general 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 and rules for any unauthorized game or practice. The acknowledgment by the chief of police or sheriff and the consent by the organization must be completed on forms provided by the attorney general.
2. Rental agreement. A copy of the rental agreement between the organization and lessor 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 chairperson 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 chairperson with signatory authority. Otherwise, the governing board form must be signed by each member of the governing board. The governing board form or resolution must state that each member understands the member's legal responsibility for the fair and lawful operation of the organization's gaming activity.
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 the charitable gaming trust fund bank account, must be completed on a form 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 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. An organization that uses net proceeds for uses benefiting that organization as provided by subdivision a of subsection 8 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) of the Internal Revenue Code. If a tax exemption letter has not been obtained, attach an explanation.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-04-06. 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

transferred its net proceeds amount to the charitable gaming trust fund bank account or disbursed its trust fund carryover amount.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-04-07. 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 an organization, the organization shall provide the attorney general, in writing, details of the change and correct any inaccuracy along with a copy of any new required documents within fourteen days following the change.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-04-08. Bingo - Local permit by local governing body only. An organization may receive one or more local permits from a local governing 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 99-01-04-09, 99-01-04-10, and this section. The organization shall at least apply sections 99-01-08-01, 99-01-08-02, 99-01-08-03, 99-01-08-04, and 99-01-08-05 to the conduct and play of bingo unless any provision of these sections is superseded by 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 applies 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 a local permit is issued for a single specific session which does not last over two consecutive weeks in a fiscal year.
  - d. The current retail price of a single bingo merchandise prize or cash prize for a game 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 entire fiscal year does not

exceed 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, except for a common entry doorway, directly 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 April 1, 1992.

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

**99-01-04-09. Raffles - Local permit by local governing body only.**

An organization may receive one or more local permits from a local governing 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 99-01-04-08, 99-01-04-10, and this section. The organization shall at least apply sections 99-01-09-01, 99-01-09-02, 99-01-09-03, 99-01-09-04, 99-01-09-05, 99-01-09-06, and 99-01-09-07 to the conduct and play of raffles, including a calendar raffle, unless any provision of these sections is superseded by 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 applies 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, during the 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 only a single specific occasion which does not last over two consecutive weeks in a fiscal year.

- 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 entire fiscal year does not exceed 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. Cash prizes for a raffle drawing occasion may not exceed 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, except for a common entry doorway directly 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 April 1, 1992.

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

99-01-04-10. Professional sports pools - Local permit by local governing body only. An organization may receive one or more local permits from a local governing 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 99-01-04-08, 99-01-04-09, and this section. The organization shall at least apply section 99-01-11-01 to the conduct and play of professional sports pools unless any provision is superseded by 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 applies 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, during the fiscal year beginning July first and ending June thirtieth.
  - c. The maximum wager on any professional sports pool is five dollars per square or line.
  - 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, except for a common entry doorway, directly 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 April 1, 1992.

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

#### CHAPTER 99-01-05 GENERAL RULES

##### Section

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99-01-05-01. Only those games as defined allowed. Notwithstanding descriptions of various games of chance, only those defined in this article may be permitted to be conducted by eligible organizations.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-05-02. Inspection of rules. An organization shall have a current copy of the North Dakota games of chance law and applicable administrative rules readily available for inspection by any person at each gaming site. This must include at least these chapters: chapter 99-01-02, definitions; chapter 99-01-05, general rules; chapter 99-01-07, work permits; chapter 99-01-19, audit, violations, and investigations; and the chapters related to the game types being conducted at the gaming site.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-05-03. Governing board.

1. An 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 an organization must annually reflect the name, address, and title of each member of the 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. Members of the governing board may conduct, or assist in the conduct of, their organization's games of chance. However, members of the 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 policy has resulted in questionable activity.
4. An organization shall make available to its governing board 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. That information and the manner in which the organization made the information available to its governing board and membership must be included in the minutes or other proper records of the organization.
5. If an administrative complaint is issued to an organization, the organization shall disclose the allegation, in writing, to its governing board within seven days from the date the complaint was received. If the organization is ultimately determined to be guilty of the allegation charged in the complaint, the organization shall disclose to its governing board and membership, in writing, the allegation charged,

findings of fact and conclusions of law, and sanction imposed upon the organization. This information must be disclosed within ninety days of the final disposition of the complaint.

6. A governing board may establish a games of chance committee. The committee 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 provisions of 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.
7. No North Dakota law enforcement official may be a member of an organization's games of chance committee.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-05-04. Specific location. For the purpose of subdivision c of subsection 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-05-05. Organizations to purchase only from licensed distributors.

1. Except for the application of subsection 1 of section 99-01-05-06, an organization licensed by the attorney general or which has been issued a local permit by a local governing body shall purchase or otherwise procure gaming equipment and supplies only from a North Dakota licensed distributor. However, the purchase of raffle tickets, jar bar, or poker table is exempt from this requirement.
2. No organization may conduct at a gaming site or be in possession at a gaming site, home office, or any other premises any deal of charitable gaming tickets, including club specials, tip boards, and seal boards, punchboards, sports-pool boards, calcutta boards, or series of paddlewheel ticket cards unless the respective flare has a North Dakota state gaming stamp affixed thereto by a licensed distributor. Once affixed, the state gaming stamp may not be tampered with by any person.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-06. Equipment acquisitions and use.

1. No organization may rent, lend, exchange, or otherwise provide the organization's gaming equipment to 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) unless the organization first requests and receives written authorization from the attorney general.
2. An eligible organization anticipating the printing, manufacture, or construction of any gaming equipment, excluding raffle tickets, jar bar, and poker table, for games of chance shall first notify the attorney general of its intention and must have the finished product approved by the attorney general before being placed in service.
3. No organization may use or permit the organization's gaming equipment to be used for nongaming purposes by any person unless the organization first requests and receives written authorization from the attorney general. The organization's written request must disclose the purpose of the use of the gaming equipment.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-06, 53-06.1-14, 53-06.1-17

99-01-05-07. Promotion of games of chance. No organization, gaming employee, or volunteer may give free games, alcoholic drinks, twenty-one chips, poker chips, or paddlewheel chips, directly or indirectly, to any person to participate in a game of chance.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-08. Door prize.

1. No organization, gaming employee, or volunteer may award a door prize as a promotion for games of chance unless the organization meets all of the following requirements:
  - a. No payment or purchase of anything is required of a person to participate.

- b. No person is forced to participate and participation is open to any person.
  - c. There must be full disclosure of the door prize to people at the gaming site to enable the people to have an opportunity to participate.
2. No organization, gaming employee, or volunteer may award a bingo card, bingo package, raffle ticket, charitable gaming ticket, twenty-one or paddlewheel chips, or any other game piece used in any game of chance as a door prize.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-09. Lessor of gaming site - Restrictions.

1. This section does not apply to an authorized licensed alcoholic beverage establishment that provides limited assistance to an organization in the conduct of charitable gaming tickets through the use of an approved and registered electronic-mechanical charitable gaming ticket dispensing device. See chapter 99-01-16.
2. A 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. This prohibition applies regardless of the percentage of ownership of the facility by the lessor. Also, the lessor's management, management's spouse, officers, and 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.
3. 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, 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 or a lessor may donate a merchandise prize to the organization. No lessor may provide

free dispensed drinks to an organization that are to be awarded by the organization as prizes in the game of chance.

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 actually take drink orders from customers or serve drinks to customers. However, an organization may establish a written house policy to allow the organization's gaming employee or volunteer to inform a lessor's employee that a customer desires to order a drink.
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.
9. No lessor may interfere with or attempt to influence an organization's disbursement of net proceeds to an eligible use.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-05-10. 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 99-01-05-14 for the maximum number of twenty-one and paddlewheel tables set up and necessary for the playing of the games twenty-one and paddlewheels 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 6 of section 99-01-04-02).



History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-11. 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-12. 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-06, 53-06.1-17

99-01-05-13. 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-05-14. Rental agreement.

1. An organization conducting games of chance at a site that is not owned by the organization shall have in writing the conditions under which it is permitted the use and occupancy of that site. The agreement must be attested to by both the lessor and organization.
2. At a minimum, every agreement entered into pursuant to this section must contain, by affirmative or negative statement, the following information:
  - a. Name of lessor.
  - b. Signature of lessor or person who has the express responsibility and authority to execute a rental agreement for the site.
  - c. Name of organization (lessee).
  - d. Signature of the top official of the organization.
  - e. 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 must end on the date of the inconsistency.

- f. Monetary consideration, if any.
  - g. Brief description of the general area being leased within the facility.
  - h. The inclusion of the following statements with appropriate selections made:
    - (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 shall not, directly or indirectly, participate in the selling, conducting, or assisting in the conduct of games of chance at the site 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."
  - i. A statement that the game of bingo is or is not the primary game of chance conducted on the site.
  - j. 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.
  - k. A statement that the game of charitable gaming tickets is or is not conducted on the site.
  - l. A statement that the game of paddlewheels, described by subsection 2 of section 99-01-15-01, is or is not conducted on the site. The number of paddlewheel tables, if any, upon which the monthly rent is based.
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. If the lessor pays for variable and seasonal expenses, the organization's fixed dollar rate per month must cover variable and seasonal

expenses, such as snow removal, air-conditioning, and heating. If bingo is the primary game of chance conducted on the site, the organization may pay variable and seasonal expenses directly to the vendor.

- a. Graduated rate arrangement is prohibited.
- b. Other remuneration, in lieu of money, is prohibited.
- c. A percentage rate is 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 or paddlewheels (involving a playing table) is conducted, for purposes of enforcing the maximum monthly rent of two hundred dollars for each table on which the games of twenty-one and paddlewheels are 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 twenty-one and paddlewheel tables set up and necessary for the playing of the games of twenty-one and paddlewheels at that site. However, this rule is subject to the restriction of paragraph 5.
  - (2) If the game of charitable gaming tickets is conducted, the maximum monthly rent may not exceed the following, subject to the restriction of paragraph 5:
    - (a) If the game of twenty-one or paddlewheels (involving a playing table) is conducted, in addition to the rent allowable for the game of twenty-one or paddlewheels, one hundred twenty-five dollars.
    - (b) If the game of twenty-one or paddlewheels is not conducted, two hundred twenty-five dollars.
  - (3) If the games of twenty-one or paddlewheels, or both, and charitable gaming tickets are conducted by a licensed organization at a special occasion for five days or less during a month and the temporary site is a public or private building, the maximum rent is

thirty-five dollars for each twenty-one and paddlewheel table and twenty-five dollars for the charitable gaming ticket activity, per special occasion. If only the game of charitable gaming tickets is conducted under those circumstances, the maximum rent is fifty 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, paddlewheels, or charitable gaming tickets, or any combination, no additional rent is allowed. Otherwise, the rent amount for a poker occasion must be reasonable.
  - (5) If two or more organizations are issued a site authorization to conduct games of chance at one specific location on different days of the week, the maximum monthly rent of the two or more organizations, in the aggregate, may not exceed the monthly rent limitations of paragraphs 1 and 2 as if only one organization was authorized to conduct games of chance at that site.
- f. Except for the application of subsections 3 and 4 of section 99-01-06-08, no organization may pay any additional amount of rent or expense from any source directly to the lessor of the site for any other purpose, such as office space, storage space, snow removal, janitorial service, equipment, maintenance, signs, lighting, decorating, or any other item normally classified as a fixed asset, associated, directly or indirectly, with games of chance on the site or any other organization activity. Except for a leased gaming site at which bingo is the primary game of chance, no organization may pay for any capital or leasehold improvements of a leased gaming site.
- g. To other than a lessor of an 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 or paddlewheel 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 rental agreement. A copy of the amended 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 April 1, 1992.

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, 53-06.1-07.4, 53-06.1-17

99-01-05-15. Person in charge and reporting of violations.

1. A licensed organization shall designate an individual at each gaming site as the person in charge. The governing board specified in section 99-01-05-03 is responsible for being aware of the conduct of games of chance at that site and compliance with the law and rules by gaming employees, volunteers, lessor, and players.
2. A licensed organization, distributor, gaming employee, or volunteer shall report any material violation of the law and rules and any burglary, vandalism, or attempted tampering of gaming equipment immediately to the attorney general or a local enforcement agency.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-05-16. Restriction of site or gaming manager. A person may not 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 section does not apply to a site or gaming manager of an organization whose total actual gross proceeds for the previous fiscal year, for which gaming tax returns were filed, was one hundred thousand dollars or less.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-05-17. Age limitation. A person under the age of twenty-one may not conduct, assist, or play any game of chance except bingo and raffles. No person under the age of twenty-one may be a member of an organization's drop box cash count team or be a gaming employee or volunteer at any licensed alcoholic beverage establishment. No person under the age of sixteen may conduct or assist in the conduct of bingo.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17



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

99-01-05-18. House rules. No house rule may conflict with 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 a game to which the rules apply can readily read those rules.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-19. Display of license and site authorization. The license and site authorization issued by the attorney general and a local governing body must be prominently displayed at all times upon the licensed site in a position that they may be observed by persons participating in gaming activities.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-20. List of employees to be available on the site. An organization shall maintain a list on the gaming site of all current employees participating in the management or operation of games of chance. The list must include the name, 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-21. Employees and volunteers to wear identification tags. An employee who is exempt from needing a state work permit under section 99-01-07-02 and each volunteer conducting or assisting in the conduct of games of chance of a licensed organization shall wear an identification tag at all times while working in the gaming area on the site. The identification tag must display at least the employee's or volunteer's first name and first initial of the last name, or employee or volunteer number, and the name of the organization. All information on the identification tag must be clear and easily visible to the players in the gaming area. The identification tag must be worn on the upper one-third of the employee's or volunteer's body. It must be furnished to the employee or volunteer by the organization who is equally responsible with the employee or volunteer to ensure the identification tag is displayed as required by this section. A city or county work permit must meet at least the requirement of this section. This section does not apply to employees or volunteers of an

organization 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.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-22. Currency of play. Playing of games of chance must be in United States of America currency. An exchange of foreign currency into United States of America currency must be done in advance of any play. The exchange rate must be that rate at which the foreign currency is exchanged for United States of America currency at the bank where the organization established the general gaming bank account for that licensed site. The organization may account for the exchange rate by rounding to the nearest nickel.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-23. Credit play prohibited.

1. Playing of games of chance must be on a cash basis. Cash includes checks. No gaming employee or volunteer may accept a credit card from any person for issuing a cash advance or for 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 gaming employee or volunteer may grant a loan or gift of any kind at any time to a player. An organization may establish a policy concerning acceptance of checks, and need not accept checks. No gaming employee or volunteer 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 the 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-24. Borrowing from gaming funds prohibited. No gaming employee or volunteer 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-25. Use of twenty-one, paddlewheel, or poker chips as payment for drinks may be allowed. An organization and lessor of the gaming site may mutually agree to allow players to use twenty-one, paddlewheel, or poker chips as payment for drinks. The organization shall redeem those twenty-one, paddlewheel, or poker chips for cash in accord with subsection 5 of section 99-01-12-13 (twenty-one), subsection 4 of section 99-01-13-09 (poker), and subsection 4 of section 99-01-15-12 (paddlewheels).

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-26. Employees and volunteers restricted in the play of games of chance.

1. No gaming employee or volunteer may play any game of chance while on duty at the gaming site; however, if an organization's total gross proceeds for the previous fiscal year, for which gaming tax returns were filed, was twenty-five thousand dollars or less, volunteers, except the bingo caller, may play bingo while on duty at the gaming site. A gaming employee or volunteer taking a temporary break is still considered on duty. A gaming employee or volunteer may play bingo, raffles, punchboard, sports pools, twenty-one, calcuttas, poker, or paddlewheels while off duty at the gaming site. A gaming employee or volunteer may 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 a volunteer plays bingo while on duty or a gaming employee or volunteer plays any game of chance while off duty at any of the organization's gaming sites, 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. No gaming employee or volunteer who is primarily designated as the person in charge for supervising an organization's games of chance at a gaming site may play any game of chance at any of the organization's gaming sites.
3. This section also applies to a person who has been issued a license to be a simulcast employee under section 69.5-01-11-07.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-27. Immediate family and common household members prohibited from playing a commingled game of charitable gaming tickets, twenty-one, and paddlewheels. No gaming employee or volunteer may allow the gaming employee's or volunteer's common household member, spouse, child, parent, brother, or sister to play a commingled game of charitable gaming tickets conducted by that gaming employee or volunteer, play twenty-one conducted by that gaming employee or volunteer, or play paddlewheels conducted by that gaming employee or volunteer, at the gaming site.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-28. Employees and volunteers prohibited from providing any inside information. No gaming employee or volunteer may provide any inside information to any person 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, a gaming employee or volunteer shall provide the information only after the attorney general or local law enforcement officials provide proper identification to the gaming employee or volunteer.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-29. More strict house rules permitted. An organization may establish house rules that are more strict than the provisions of this article 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 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 common household member of any of

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

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-30. 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, distributor, manufacturer, or licensed alcoholic beverage establishment.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-31. Policy and procedures manual. An organization shall have a current written policy manual regarding its conduct and play of games of chance readily available for review by the attorney general, local law enforcement officials, and players at each gaming site. This manual must at least include the organization's house policies and procedures for resolving a question, dispute, or violation of law or rules by any person. This policy and procedures manual may not include the organization's internal controls required by section 99-01-06-02.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-32. Bonding or theft insurance must be considered. An organization's governing board shall consider, at least on an annual basis, 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-33. Gaming employees and volunteers shall read the law and administrative rules.

1. Each gaming employee and volunteer of an 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 sections of the law and chapters of this article 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 sections of the law and chapters of this article 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 and within fourteen days of the date new gaming administrative rules are promulgated. The acknowledgment must be dated and indicate the particular sections of the law and chapters of this article that the gaming employee or volunteer has read, and be part of the organization's permanent personnel file of the gaming employee or volunteer.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-34. 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-35. 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-06, 53-06.1-17



99-01-05-36. Required orientation for licensed organizations. An organization licensed by the attorney general to conduct games of chance shall request, within the first quarter of the commencement of conducting games of chance, orientation from the attorney general. Any organization licensed by the attorney general to conduct games of chance 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, internal control, and preparation of the gaming tax return. At a minimum, the organization's governing board or the person responsible for the recordkeeping, or both, shall participate in the orientation.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-05-37. 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 this article, shall request, within ninety days of the date of the bookkeeper's employment, 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. 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, reconciliation of bank accounts, and verification that the organization's internal controls are complied with.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

#### CHAPTER 99-01-06 GENERAL ACCOUNTING RULES

Section	
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99-01-06-15	Independent Audit Required for Certain Organizations

99-01-06-01. General accounting records. An eligible organization shall maintain complete, accurate, and legible general and subsidiary accounting records. The records must be retained for three years from the end of the quarter in which the gaming activity occurred unless the organization is released by the attorney general from this requirement. The records must be maintained in North Dakota.

History: Effective April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-17

99-01-06-02. System of internal control. In order to adequately determine its liability for taxes under North Dakota Century Code sections 53-06.1-12 and 53-06.1-12.2, 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 a 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 provide a copy of its internal control system to the attorney general. The attorney general may require that the organization revise its internal control system if the system does not meet the internal control objectives of section 99-01-06-03. No organization may permit any person to review this system, except for the attorney general, law enforcement official, organization-authorized gaming employees and volunteers, and a person serving in an advisory capacity.

History: Effective April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-17

99-01-06-03. Internal control objectives.

1. A system of accounting control 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. A system of administrative control 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 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 that inadequacy. Upon receipt of that notice, the organization shall take immediate steps to remedy the inadequacy and shall notify the attorney general in writing of 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 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 organization, general guidelines for the organization's use in developing internal control system.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-06-04. General gaming bank account - Class A and class B.

1. An organization shall maintain at least one general gaming bank account at a financial institution, located within the state of North Dakota, for each license issued for a city or county. However, if the organization is issued two or more licenses, for gaming sites located in two or more cities or

counties, at which the organization is conducting charitable gaming tickets exclusively through the use of electronic-mechanical dispensing devices (see chapter 99-01-16), the organization may maintain only one general gaming bank account for these two or more licenses. This account may be used for payment of gaming expenses. The 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. Interest earned on this account's funds is classified as other income.
3. Service fees of this account are a gaming expense.
4. Except as provided by subsection 1 of section 99-01-09-08, 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 that deposit is a reimbursement of excess gaming expenses (section 99-01-06-09).
5. An organization shall maintain the general gaming bank account for the transfer of net proceeds directly to the charitable gaming trust fund bank account. This transfer must be made by the last day of the quarter following the quarter during which the net proceeds were earned. For purposes of this rule, net proceeds is calculated as adjusted gross proceeds, less the gaming and excise taxes imposed by North Dakota Century Code sections 53-06.1-12 and 53-06.1-12.2, and less the greater of the actual gaming or allowable expenses.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-06-05. Charitable gaming trust fund bank account - Class A and class B.

1. To ensure that the entire net proceeds are devoted to an eligible use, an organization 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. Except to reimburse this account for a negative imbalance, this account must receive only those transfers from the general gaming bank account established for each license issued. See section 99-01-06-04. Except for the supplemental bank account (see section 99-01-06-06), the charitable gaming trust fund bank account must be used as the source to disburse

the actual eligible uses and in no instance may the funds of the charitable gaming trust fund bank account be used for any other purpose.

2. A class A organization's net proceeds, as calculated by subsection 5 of section 99-01-06-04, must be transferred to the charitable gaming trust fund bank account and may, at the organization's discretion, be subsequently transferred to a supplemental bank account (see section 99-01-06-06). Unless an extension is requested, in writing, of the attorney general and an extension is granted, the net proceeds must be devoted from these accounts by the last day of the quarter following the quarter during which the net proceeds were earned.
3. A class B organization is not subject to any time limitations for devoting net proceeds, as calculated by subsection 5 of section 99-01-06-04, to eligible uses 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 devotion 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.
4. Except for transfers by a class A organization to a supplemental bank account, transfers may not be made to the general operating account or any other bank account of the organization but must be made to the ultimate use. However, if compensation that qualifies as an eligible use is paid from a class B organization's general operating account, the organization may transfer funds to its general operating account. This transfer must be documented by a supporting schedule.
5. No organization may claim a negative adjustment against the trust fund carryover on the North Dakota gaming tax return for any actual loss on an investment of net proceeds in a marketable security.
6. Interest earned on this account's funds must be included in the account and devoted for eligible uses.
7. Service fees must be an adjustment to the account.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-02, 53-06.1-06, 53-06.1-11, 53-06.1-17

**99-01-06-06. Supplemental bank account - Class A.** A class A organization may establish no more than one supplemental bank account for one or more predesignated purposes to which gaming net proceeds may be transferred directly from the charitable gaming trust fund bank

account. The supplemental bank account may only be used to receive and temporarily hold net proceeds pending the devotion to the ultimate eligible use. The ultimate use must be reported on the North Dakota gaming tax return. The net proceeds must be devoted from this account by the last day of the quarter following the quarter during which the net proceeds were earned.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-06-07. Method of accounting.

1. An 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 paddlewheel ticket cards.
  - b. Accrual basis - club specials, tip boards, seal boards, punchboards, professional sports pools, calcuttas, and raffles.
2. An 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 paddlewheel ticket cards, sports-pool boards, calcutta boards, deals of charitable gaming tickets, club specials, tip boards, seal boards, and paper bingo cards must be determined on the accrual basis.
  - b. The taxes imposed by North Dakota Century Code sections 53-06.1-12 and 53-06.1-12.2 must be deducted on the accrual basis.
3. A liable organization shall determine and deduct the federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C 4401] on the accrual basis.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-06-08. Special restrictions.

1. A licensed organization is allowed an expense limitation of fifty percent of the first two hundred thousand dollars of total adjusted gross proceeds 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 expense percentage limitation may be used for any purpose, provided 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. The organization shall report its correct total actual gaming expenses on the North Dakota gaming tax return.

2. No organization may base any employee's compensation on a participatory percentage of the actual or budgeted gross proceeds, 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, federal excise 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. No organization may pay or reimburse a lessor for any newspaper, radio, or television advertising by the lessor or any other person that is related to games of chance at a gaming site unless the organization's share of this advertising expense is reasonably prorated to the benefit the organization receives from the advertisement. Any payment to the lessor for advertising by an organization that is not reasonably prorated will create a presumption of a circumvention by the organization of the rent restrictions of section 99-01-05-14.
4. No organization may pay or reimburse a lessor or share in the cost of any sign advertising related to games of chance at a gaming site unless the sign is owned by a person other than the lessor. Accordingly, if a lessor rents an advertising sign directly from a vendor, the organization's share of this



advertising expense must be prorated to the benefit the organization receives from the advertisement. Any payment for advertising by an organization that is not reasonably prorated will create a presumption of a circumvention by the organization of the rent restrictions of section 99-01-05-14. If the lessor owns the advertising sign, through a straight purchase or lease purchase agreement, the organization may not pay any amount from any source to the lessor for the sign advertising.

5. The amount of any player check returned by a bank to an organization as unpaid for whatever reason, including nonsufficient funds, and is uncollectible by the organization 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.
6. The expense percentage limitation amount or any other source of funds may not be used by an 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 99-01-05-14, or of this section.
7. If a door prize is awarded as a promotion of games of chance, an organization's cost of the door prize is a gaming expense towards the expense percentage limitation 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.
8. 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.
9. The monetary fine imposed on an organization by the attorney general in accordance with section 99-01-19-05 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.
10. 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.

11. 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.
12. An organization that has been issued a license by the attorney general to conduct games of chance for a licensing fiscal year shall file a North Dakota gaming tax return each quarter regardless if the organization was inactive during a quarter. However, this rule does not apply to a quarter following the quarter during which an organization relinquished its license or has had its license suspended or revoked.
13. No organization may claim a theft of gaming funds as a deduction toward adjusted gross proceeds on the North Dakota gaming tax return unless the organization meets the criteria prescribed by the attorney general.
14. If an organization rents gaming equipment in accord with subsection 1 of section 99-01-05-06, such as a twenty-one table or bingo flashboard, to another licensed organization, the rental income is classified as nongaming income and is not reported on the North Dakota gaming tax return.
15. If a gaming employee or volunteer needs to replenish or increase a cash bank for any reason and the gaming employee or volunteer does not have available cash on hand from another source, the gaming employee or volunteer shall do either or both of the following options:
  - a. Execute a cash withdrawal directly from the organization's general gaming bank account.
  - b. Record a player's check and the amount of cash which is to be withdrawn on a deposit slip of the general gaming bank account. The gaming employee or volunteer shall legibly sign the deposit slip with at least the gaming employee's or volunteer's last name and date the deposit slip. The deposit slip must be validated. No organization may cash

a player's check for cash at a financial institution for any reason unless the player's check is properly recorded on a deposit slip.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-06, 53-06.1-11, 53-06.1-17

99-01-06-09. Expense limitation. If the expense percentage limitation 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 an organization by the due date of the North Dakota gaming tax return for the quarter ended June thirtieth. Net proceeds devoted to the organization from another licensed organization's charitable gaming trust fund bank account may not be used to pay the excess of expenses over the allowable expense percentage limitation.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-06-10. 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 poker gross proceeds and adjusted gross proceeds.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-06-11. Reconciliation of net proceeds carryover and trust fund carryover.

1. In order for an organization to timely identify and resolve any negative imbalances between the organization's general gaming bank account check register balance and the net proceeds carryover and 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.
2. The amount of any negative imbalance, caused by any reason whatsoever, determined by subsection 1 must be deposited in the respective general gaming bank account or charitable gaming trust fund bank account by an organization's general

operating account by the due date of the North Dakota gaming tax return for the quarter ended June thirtieth 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 subsection 1.

3. When requested by the attorney general, an organization shall do a reconciliation as provided by subsection 1 on a more frequent basis than annually.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-06-12. Valuation of prizes. For purposes of computing adjusted gross proceeds, noncash prizes must be valued at actual cost to an organization. A donated merchandise prize is valued at zero for computing prizes on the gaming tax return.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-06-13. Use of net proceeds - Reports. An organization shall file a record of eligible use contributions with the North Dakota gaming tax return. However, if the organization is not required to file a gaming tax return due to a nonrenewal of license, relinquishment of license, or license suspension or revocation, the organization shall continue to file a record of eligible use contributions to account for the devotion of net proceeds.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-02, 53-06.1-11, 53-06.1-17

99-01-06-14. 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-16, 53-06.1-17

99-01-06-15. 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 within fourteen days of when the organization received the final audit report from the auditor. The audit must meet the objectives prescribed by the attorney general. This rule applies to the organization's first fiscal or calendar year beginning on or after January 1, 1992.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

#### CHAPTER 99-01-07 WORK PERMITS

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99-01-07-14 Separation of Employment  
Notification of Resignation, Suspension, or  
Involuntary Separation of Employment  
99-01-07-15 Denial, Suspension, or Revocation of a Work Permit  
or Registration Card

99-01-07-01. Work permit.

1. Except as exempted by section 99-01-07-02 or unless a person has a temporary work permit, no person may be employed as a gaming employee for a licensed organization or distributor, or be a restricted gaming employee for a licensed organization, until the person has been issued a work permit, and, if required by a city or county governing body, a local work permit. If a person is employed as a gaming employee by more than one organization or distributor, or as a restricted gaming employee for more than one organization, the person must have a separate work permit for each employer.
2. The definition of gaming employee and restricted gaming employee includes a permanent or temporary employee of an organization who is at any time, directly or indirectly, operating games of chance on the gaming site, a permanent or temporary employee of a distributor, except a person hired temporarily by a distributor to only unload freight, and a permanent or temporary employee of a licensed alcoholic beverage establishment who provides limited assistance to an organization in the conduct of a game of charitable gaming tickets through the use of an electronic-mechanical charitable gaming ticket dispensing device. A salesperson of a distributor who is employed as an independent contractor and a service technician of a manufacturer's distributor of electronic-mechanical charitable gaming ticket dispensing devices are classified as a distributor gaming employee for the purpose of this rule.
3. A work permit is nontransferable.
4. Unless a work permit expires, is suspended or revoked, a work permit is valid for a period not to exceed two years beginning January 1, 1991, or the effective date, whichever date is later, and ending on December thirty-first of the year following the year in which the work permit was effective.
5. A work permit for a gaming employee of an organization is valid for any gaming site of the employing organization. A work permit for a restricted gaming employee is valid for only the licensed alcoholic beverage establishment where the restricted gaming employee is employed and for only the respective organization that has an electronic-mechanical charitable gaming ticket dispensing device at that establishment.

6. A work permit is automatically suspended when a person resigns or involuntarily separates from employment.
7. A work permit expires when any of the following conditions first occurs:
  - a. The end of the period for which the work permit was issued.
  - b. If a person is not employed as a gaming employee by a licensed organization or distributor, or as a restricted gaming employee for an organization, or is on a leave of absence, for more than ninety days. However, this rule does not apply when an organization's or distributor's license is suspended for more than ninety days and the employee will continue employment with the organization or distributor following the suspension.
8. A work permit supersedes a gaming employee's identification tag required by section 99-01-05-21. A gaming employee who is required to apply for a registration card with the attorney general's office in accord with section 99-01-07-03 is still required to wear the identification tag.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-07-02. Work permit exemptions. The following persons are exempt from needing a work permit:

1. A volunteer.
2. A person who is involved only in raffle or sports-pool activity of an organization.
3. A person employed by an organization which conducts games of chance on no more than seven calendar days during a calendar year.
4. A person referenced by the definitions of "gaming employee" (see subsection 45 of section 99-01-02-01) and "conduct of games of chance" (see subsection 24 of section 99-01-02-01) who exclusively promotes games of chance, purchases equipment and supplies, or pays expenses or eligible use contributions.
5. A person who qualifies to register with the attorney general's office in accordance with section 99-01-07-03.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17



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

99-01-07-03. Registration card.

1. A person, employed by an organization, who is not at any time, directly or indirectly, operating games of chance on the gaming site, but is primarily or secondarily responsible for any of the following duties, shall apply for a registration card with the attorney general's office:
  - a. Indirect control or management of an organization's gaming operation. However, this duty excludes the responsibility of a member of a governing board or games of chance committee.
  - b. Overseeing the activities of an electronic-mechanical charitable gaming ticket dispensing device used under the provisions of chapter 99-01-16, including placing a new deal of tickets in the device, withdrawing the currency from a device's currency collection and stacker box, and reimbursing a licensed alcoholic beverage establishment for the value of redeemed winning tickets.
  - c. Bookkeeping, cash count, analysis or audit of games of chance activity, preparation and reconciliation of bank deposits, and carrier of bank deposits to a financial institution.
  - d. Inventory control, inventory reconciliation, and security.
2. If a person has not been issued a registration card or work permit, the person may not perform the duties referenced by subdivisions a, b, c, and d of subsection 1.
3. A registration card is nontransferable.
4. Unless a registration card expires, is suspended or revoked, a registration card is valid for a period not to exceed two years beginning January 1, 1992, or the effective date, whichever date is later, and ending on December thirty-first of the year following the year in which the registration card was effective.
5. A registration card is valid for any gaming site of the employing organization.
6. A registration card is automatically suspended when a person resigns or involuntarily separates from employment.
7. A registration card expires when any of the following conditions first occurs:

- a. The end of the period for which the registration card was issued.
  - b. If a person is not employed as a gaming employee by a licensed organization or distributor for more than ninety days.
8. This section does not apply to a gaming employee of a distributor or a restricted gaming employee for an organization.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-07-04. Qualifications of an applicant for a work permit and registration card.

1. An applicant must be at least twenty-one years of age, except:
  - a. An employee of a distributor must be at least eighteen years of age.
  - b. An employee hired only for the conduct of bingo at a gaming site must be at least sixteen years of age provided that:
    - (1) The primary game of chance is bingo.
    - (2) No alcoholic drink is offered for sale, sold, or served.
  - c. An employee of an organization who is a bookkeeper or has administrative responsibilities.
2. An applicant must be a United States citizen or eligible to work in the United States.
3. No person who has pled guilty or been convicted of a felony criminal offense, or been released from parole, incarceration, or probation due to a felony offense, may be issued a work permit or be registered within five years from the date of the conviction, release from parole, incarceration, or probation, whichever is the latter. If the felony conviction is for a crime that has a direct bearing on the applicant's fitness to be involved in gaming, the attorney general may deny a work permit or registration card for a period determined by the attorney general.
4. No person who has pled guilty or been convicted of an offense contained in North Dakota Century Code chapters 12.1-06 (criminal attempt, facilitation, solicitation, or conspiracy),

12.1-08 (obstruction of law enforcement or escape), 12.1-09 (tampering and unlawful influence), 12.1-10 (contempt or obstruction of judicial proceedings), 12.1-11 (perjury, falsification, or breach of duty), 12.1-12 (bribery or unlawful influence of public servants), 12.1-22 (robbery or breaking and entering offenses), 12.1-23 (theft and related offenses), 12.1-24 (forgery and counterfeiting), 12.1-28 (gambling and related offenses), 53-06.1 (games of chance), 53-06.2 (parimutuel horse racing), section 6-08-16 (insufficient funds), and section 6-08-16.2 (no account checks), or who has committed any offense or violation that has a direct bearing on the applicant's fitness to be involved in gaming may be issued a work permit or registration card within two years from the date of the conviction, release from parole, incarceration, or probation, whichever is the latter unless the attorney general determines that the person is

sufficiently rehabilitated according to subsection 2 of North Dakota Century Code section 12.1-33-02.1.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-07-05. Work permit and registration card application.

1. A person applying for a work permit or registration card must first be employed or have a written promise of employment by an organization, distributor, or licensed alcoholic beverage establishment.
2. An application for a work permit or registration card must be on a form prescribed by the attorney general. The applicant shall provide such information as the attorney general requires.
3. An applicant shall obtain the signature and date of an authorized representative of the employing organization, distributor, or organization that has an electronic-mechanical charitable gaming ticket dispensing device on the licensed alcoholic beverage establishment. The organization, rather than the licensed alcoholic beverage establishment, shall validate (signing and dating) a restricted gaming employee's work permit application.
4. An applicant for a work permit shall submit a fingerprint card of the applicant's fingerprint impressions taken by a local law enforcement official or a person authorized by the attorney general to take fingerprint impressions. A fingerprint card is required for only the first application. This rule does not apply to an applicant applying for a registration card.

5. If an applicant is employed by more than one organization or distributor, or is employed as a restricted gaming employee for more than one organization, the applicant shall submit a separate application for each organization or distributor.
6. A person obtaining reemployment with a former organization or distributor, or is reemployed as a restricted gaming employee for an organization, shall apply for a new work permit unless the reemployment occurs within ninety days of the date of the former employment with that organization, distributor, or licensed alcoholic beverage establishment and the reemployment occurs within the same period in which the work permit was issued.
7. An application for a work permit or registration card authorizes the attorney general to investigate the applicant's general character, integrity, reputation, honesty, habits, associations, criminal record, and ability to participate or engage in, or be associated with, gaming. The applicant shall provide proof of the qualifications described in the application.
8. The fee required by section 99-01-07-11 must be remitted with the application.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-07-06. Work permit issuance.

1. When the attorney general determines that an applicant qualifies for a work permit, the attorney general shall mail or otherwise provide a work permit data card to the applicant. The applicant shall then present the work permit data card at a North Dakota department of transportation driver's license and traffic safety division photo site to enable the applicant to have two photographs taken. The department of transportation shall affix one photograph to a facsimile of the data card (work permit), laminate the work permit, provide the work permit to the applicant, and transmit the second photograph along with the original work permit data card to the attorney general.
2. No applicant may in any manner mark, deface, modify, or tamper with an issued work permit data card or a state work permit.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-07-07. Registration card issuance.

1. When the attorney general determines that an applicant qualifies for a registration card, the attorney general shall mail or otherwise provide a registration card to the applicant.
2. No applicant may in any manner mark, deface, modify, or tamper with an issued registration card.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-07-08. Local work permit.

1. A city or county governing body may require a person to obtain a local work permit.
2. Unless a person is exempted by section 99-01-07-02, no local work permit may be issued by a city or county governing body until the person first has a validated temporary work permit or has been issued a state work permit.
3. A person who desires to work in a city or county that requires a local work permit shall obtain the local work permit prior to working in the city or county.
4. A city or county governing body may require certain qualifications of an applicant for a local work permit in addition to the qualifications stated in section 99-01-07-04.
5. A local work permit is nontransferable.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-06.1, 53-06.1-17

99-01-07-09. Temporary work permit.

1. A person may obtain a temporary work permit prior to being issued a work permit provided the person:
  - a. Completes an application for a work permit.
  - b. Obtains the signature and date on the temporary work permit of an authorized representative of the employing organization, distributor, or organization that has an electronic-mechanical charitable gaming ticket dispensing device on the licensed alcoholic beverage establishment. The organization, rather than the licensed alcoholic

beverage establishment, shall validate (signing and dating) a restricted gaming employee's temporary work permit.

- c. Submits the work permit application and a copy of the temporary work permit to the attorney general.
2. A licensed organization or distributor shall:
    - a. Validate a temporary work permit by signing and dating the temporary work permit.
    - b. Notify the attorney general immediately upon issuing a temporary work permit. The notification must include:
      - (1) Temporary work permit number.
      - (2) Employee's name, complete address, date of birth, and social security number.
      - (3) Name of organization or distributor and license number.
      - (4) City or county and name of gaming site where the gaming employee will work.
      - (5) Reason for issuing a temporary work permit.
    - c. Assure that the gaming employee submits the work permit application, application fee, fingerprint card, and a copy of the temporary work permit to the attorney general within seven days of receiving a temporary work permit.
  3. The attorney general shall provide temporary work permit forms to each organization and distributor.
  4. A temporary work permit is valid for forty-five calendar days from the date of issuance unless the temporary work permit is revoked, or until the holder of the temporary work permit receives a work permit from the attorney general, whichever occurs first. It is nonrenewable.
  5. A temporary work permit must be surrendered by a gaming employee on demand by an organization, distributor, local law enforcement official, or attorney general. A temporary work permit must be surrendered by a restricted gaming employee on demand by an organization that had issued it, local law enforcement official, or attorney general. A temporary work permit may be revoked on demand by the attorney general or local law enforcement official. If the attorney general or local law enforcement official revokes a temporary work permit, the attorney general or local law enforcement official shall provide reasons, in writing, for the revocation of the

temporary work permit and provide the gaming employee an opportunity to refute the reasons after the temporary work permit has been revoked.

6. A city or county that has a local work permit system may honor a temporary work permit at the city's or county's discretion and may decline to issue a local work permit to a person who has a temporary work permit.
7. If a person has an existing gaming work permit or an existing simulcast work permit and desires to have both a gaming work permit and a simulcast work permit, the person shall comply with this section to obtain a temporary work permit for both types of activity.
8. No applicant may in any manner mark, deface, modify, or tamper with a temporary work permit.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-07-10. Duty to disclose information and cooperate, and confidentiality of information.

1. Refusal by an applicant to comply with a request for information may be a basis for denying, suspending, or revoking a work permit, temporary work permit, or registration card, or disqualifying the applicant.
2. Failure to provide all information, documentation, assurances, consents, waivers, photographs, fingerprint impressions, or other material requested by the attorney general, or to pay the required fee will be a basis for denying a work permit or registration card.
3. All records acquired or compiled by the attorney general about a work permit or registration card are confidential and may not be disclosed except in the proper administration of this article and North Dakota Century Code chapter 53-06.1. The attorney general may provide to a law enforcement agency:
  - a. Information concerning any item contained in a gaming employee's work permit or registration card file or disclosed by any investigation of a gaming employee who has been issued a work permit or registration card.
  - b. A listing of persons who have been issued and denied a work permit and registration card, and whose work permit or registration card has been suspended or revoked.

History: Effective April 1, 1992.



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

99-01-07-11. Fees.

1. The following fee structure applies to a person applying for a gaming, simulcast, gaming and simulcast, or restricted gaming employee work permit, or registration card relating to an initial application, biannual reapplication, change of type of work permit/registration, change of employer, name change, replacement of a lost or destroyed work permit or registration card, replacement of a lost or destroyed data card, and additional employer:

	Work Permit				
	<u>Gaming</u>	<u>Simulcast</u>	<u>Gaming and Simulcast</u>	<u>Restricted Gaming Employee</u>	<u>Registration Card</u>
Initial application	\$15	\$15	\$25	\$15	\$10
Biannual reapplication	10	10	15	10	5
Change of type of work permit/registration	10	10	15	10	5
Change of employer	10	10	10	10	5
Name change (organization, distributor, licensed alcoholic beverage establishment, gaming employee, restricted gaming employee)	10	10	10	10	5
Replacement of a lost or destroyed work permit or registration card	10	10	10	10	5
Replacement of a lost or destroyed data card	5	5	5	5	n/a
Additional employer (person is working simultaneously for more than one organization, distributor, or licensed alcoholic beverage establishment)	5	5	5	5	5

2. The fee includes the cost of the photographs.
3. No fee may be prorated.

4. No fee may be refunded due to withdrawal, denial, suspension, or revocation of an initial application, subsequent reapplication, or work permit. No fee related to the registration card or subsequent reregistration of certain gaming employees may be refunded.
5. There is no fee for reissuing a work permit or registration card to a gaming employee who is reemployed with a former employing organization or distributor, or a restricted gaming employee who is reemployed with a former employing licensed alcoholic beverage establishment within ninety days of the employee's separation of employment in the same period in which the work permit or registration card was issued.
6. A local law enforcement agency may charge a fee for taking fingerprint impressions.
7. In addition to the fees referenced by subsection 1, the attorney general may assess an applicant any additional fees necessary to defray the actual cost of a background investigation when adequate background information sources are not readily available. The attorney general may require an applicant to pay the estimated additional fee in advance of an investigation.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-07-12. Gaming employee required to display the work permit.

1. A gaming employee of an organization and a restricted gaming employee of a licensed alcoholic beverage establishment shall wear a work permit at all times while on duty in the gaming area at a gaming site. A gaming employee or restricted gaming employee taking a temporary break is still considered on duty. The work permit must be worn on the upper one-third of the employee's body and must be clearly visible to the general public.
2. If a gaming employee of an organization or a restricted gaming employee of a licensed alcoholic beverage establishment has a temporary work permit but has not been issued a work permit, the gaming employee and restricted gaming employee shall display the temporary work permit in the same manner required for a work permit.
3. A gaming employee working at a business premise of an organization, other than the gaming area at a gaming site, shall have a work permit in the employee's immediate possession.

4. A gaming employee of a distributor shall have a work permit in the employee's immediate possession while working at a business premise of the distributor, or while offering for sale, selling, delivering, or otherwise providing gaming equipment to an organization or distributor.
5. No gaming employee may wear a work permit or temporary work permit issued for a designated employing organization at any other organization's gaming site.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-07-13. Work permit, temporary work permit, or registration card expired, lost, or destroyed, and return of a work permit, temporary work permit, or registration card to the attorney general due to a suspension or revocation of a work permit, temporary work permit, or registration card, or separation of employment.

1. Upon the expiration of a work permit, temporary work permit, or registration card, notification of suspension or revocation of a work permit, notification or revocation of a temporary work permit, or resignation or involuntary separation of employment, a gaming employee or restricted gaming employee shall relinquish the work permit, temporary work permit, or registration card to the organization, distributor, local law enforcement official, or attorney general. If the organization or distributor has recovered the gaming employee's or restricted gaming employee's work permit, temporary work permit, or registration card, the organization or distributor shall immediately submit the work permit, temporary work permit, or registration card to the attorney general. Failure by the gaming employee or restricted gaming employee to immediately relinquish a work permit, temporary work permit, or registration card as required may result in a delay in issuance, reissuance, denial, or revocation of a current or future work permit.
2. If a work permit or registration card is lost or destroyed, a gaming employee shall immediately report the loss or destruction in writing to the attorney general and apply for a replacement work permit or registration card.
3. If a work permit or registration card is lost or destroyed, and if a gaming employee desires to continue working for an organization or distributor, or if a restricted gaming employee desires to continue assisting an organization, the gaming employee or restricted gaming employee shall obtain a temporary work permit or registration card as provided by section 99-01-07-09.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-06.1, 53-06.1-17

99-01-07-14. Notification of resignation, suspension, or involuntary separation of employment. Immediately following a gaming employee's or a restricted gaming employee's resignation, suspension, or involuntary separation of employment, the organization or distributor shall notify the attorney general of such action on a form prescribed by the attorney general and shall provide a general reason for the separation of employment.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-06.1, 53-06.1-17

99-01-07-15. Denial, suspension, or revocation of a work permit or registration card.

1. The attorney general may deny, suspend, or revoke a work permit or registration card if a person:
  - a. Supplied false or misleading information to the attorney general.
  - b. Obtained a work permit or registration card by fraud, trick, misrepresentation, or concealment.
  - c. Is disqualified due to the application of subsection 3 or 4, or both, of section 99-01-07-04, or due to criteria contained in North Dakota Century Code chapter 53-06.1, including a violation of any rule adopted pursuant to that chapter.
2. If the attorney general seeks to suspend or revoke a work permit or registration card, the attorney general shall mail a complaint to the gaming employee or restricted gaming employee, at the last known address provided to the attorney general, and notify the employing organization, distributor, or licensed alcoholic beverage establishment. The complaint must state the reason for the pending suspension or revocation of the work permit or registration card. The gaming employee or restricted gaming employee may provide an explanation in writing refuting the complaint for suspension or revocation of the work permit or registration card. The explanation must be postmarked or otherwise received by the attorney general within twenty days of the date of the attorney general's complaint. If the attorney general or the attorney general's designee determines there is a reasonable basis to believe the reasons in the complaint are true and support a suspension or

revocation, the attorney general shall notify the gaming employee or restricted gaming employee and the employing organization, distributor, or licensed alcoholic beverage establishment of the suspension or revocation in writing.

3. When an application for a work permit or registration card is denied, or a work permit or registration card is suspended or revoked, the notice of the denial, suspension, or revocation must include a statement of the facts upon which the attorney general based the decision. A suspension period will begin on the date specified by the attorney general.
4. Any person whose application for a work permit or registration card has been denied, or whose work permit or registration card has been suspended or revoked may apply for a hearing within twenty days following receipt of the notice of the denial, suspension, or revocation. The hearing must be at a time and location determined by the attorney general as prescribed by North Dakota Century Code chapter 28-32.
5. A work permit must be surrendered by a gaming employee on demand by an organization, distributor, local law enforcement official, or attorney general, or by a restricted gaming employee on demand by an organization, local law enforcement official, or attorney general pursuant to an emergency order.
6. No person whose application for a work permit or registration card has been denied, or whose work permit or registration card has been suspended or revoked within the last two years may be a volunteer for a licensed organization or distributor unless written permission is first requested and obtained from the attorney general.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

#### CHAPTER 99-01-08 BINGO

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99-01-08-01. Bingo. "Bingo" is 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. An 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 34 of section 99-01-08-03), the players manually cover squares as the 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 selling price and prize value of premium bingo cards being greater than the selling price and prize value of regular cards). The policies must include the following:

1. If the designated prize is cash and all the verified winners bingo on identically priced bingo cards, the total cash prize must be divided equally between the verified winners. However, an organization may round fractional dollars to the lowest or highest dollar.

2. If the designated prize is cash and the verified winners bingo on differently priced bingo cards, an 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 is merchandise and this prize cannot be divided, an organization shall do one of the following:
  - a. Award each verified winner a substitute merchandise prize provided 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 designated prize. A merchandise prize may be redeemable or convertible into cash at the discretion of the organization.



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

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-08-02. 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. A paper bingo card (synonymous with specials, throwaways, and disposables) that provides 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. A card must be at least two-part carbonless and contain a control number.
  - b. A card must have at least twenty-five squares arranged in five vertical and five horizontal rows. The letters B, I, N, G, O must be preprinted above the five vertical columns.
  - c. Each of the squares must have 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 legibly, using a ballpoint pen, by the player.
  - e. A number cannot be repeated on the card.
  - f. After a card is completed, the player shall provide the organization with the original part of the card prior to the start of the game. The player shall retain the duplicate part of the card.
  - g. An organization shall verify a winning card by matching the original part of the card to the duplicate part.
  - h. A card must be voided if it is unclear or altered.
4. An organization may use reusable paper bingo card singles and booklets provided that the organization complies with the provisions of this chapter and that a manufacturer of such booklets has master checkbooks of all printed bingo cards available for purchase or use by the organization.
  5. Prior to each session, a gaming employee or volunteer shall test its bingo equipment to determine whether it is working properly. At this time, if the equipment is malfunctioning or a light bulb on an electronic flashboard, including a "bonanza bingo" flashboard, is burned out, the gaming employee or volunteer shall immediately arrange for the repair of the equipment and replace the light bulb.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-08-03. Manner of conducting bingo. The conduct of a bingo session must be according to the following rules:

1. An organization shall post a clear and legible sign on the site where bingo is played containing a summary of subsections 4, 12, 14, 15, 24, 29, 30, 35, and 36.

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 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 gaming employee or volunteer may sell gift certificates towards the purchase of bingo cards or award gift certificates as bingo prizes for a bingo session unless at least the following requirements are met:
  - a. Gift certificates must be individually accounted for by the organization when the certificates are sold. An organization shall recognize the sale of the gift certificates as gross proceeds on the North Dakota gaming tax return for the quarter during which the gift certificates were sold.
  - b. A gaming employee or volunteer shall issue a receipt to the purchaser or bingo winner to evidence the sale or win. The receipt may be the gift certificate.
  - c. A player shall redeem the receipt and the receipt must be retained by the organization.
  - d. A player must be issued the bingo cards at the gaming site when the receipt is redeemed (subsection 10).
6. If an organization changes a publicly announced bingo program for a session, a gaming employee or volunteer shall notify the player of the change prior to the player's purchase of bingo cards for that session at the gaming site.
7. 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, a gaming employee or volunteer shall differentiate each differently priced card by a method that enables a gaming employee or volunteer and players to clearly and easily distinguish which specific priced card incurred the bingo for the respective bingo prize value.

8. If an organization accepts a bingo card or package discount coupon, the redeemed coupon must be signed by the player. The dollar value or percentage discount (i.e., one-half off) of the coupon must be printed or written on the coupon. When the coupon is redeemed, a gaming employee or volunteer shall write the value of the bingo card or package purchased by the player on the face of that redeemed coupon unless that value is already stated on the 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. The value of the coupon or coupons used in combination may not equal or exceed the value of the bingo card or package purchased by the player.
9. If an organization accepts an item (i.e., canned food) in exchange for a bingo card or package discount, a gaming employee or volunteer shall account for the discount on a register as part of the bingo session's daily accounting records. The value of the discount must be less than the value of the bingo card or package purchased by the player. The register must contain at least the following information:
  - a. Session.
  - b. Date of the bingo session.
  - c. Amount of the bingo card or package discount.
  - d. Value of the bingo card or package purchased.
  - e. Legible signature of the player.
  - f. Total amount of the bingo card or package discounts for the session.
  - g. Legible signature and date of the cashier.
10. All issuances of bingo cards to players must take place upon the site immediately preceding or during the bingo session for which the cards were purchased.
11. Two or more sets of paper bingo cards may not intentionally be used at the same time if they have identical manufacturer assigned serial numbers when subdivision b of subsection 5 of section 99-01-08-09 is being used for receipting gross proceeds for a particular bingo game.

12. Bingo cards must be sold and paid for prior to the start of a specified game or specified number of continuous games. Cards may not be sold for a game in progress after the first number of that game is called or displayed. An organization may not include paper bingo cards in a bingo package when those bingo cards relate to a game already conducted or in the process of being conducted. However, this subsection does not apply to a "bonanza bingo" game.
13. 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 gaming employee or volunteer may refund to a player any part or all of the player's purchase price of bingo cards.
14. No gaming employee or volunteer or player may separate a paper bingo card when there are two or more faces on one sheet. Separate means, for example, taking a "three-on-one" bingo card which has three faces on one sheet and cutting it to create three "one-on-one" bingo cards.
15. No player may play bingo cards not purchased from the organization for that bingo session or more bingo cards than were actually paid for. At the organization's discretion, a player 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.
16. 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 15) by another person, the organization shall apply particular procedures to ensure that the person does not play the bingo card. At a minimum, a gaming employee or volunteer 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.
17. 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 actually drawn and called or freely awarded (wild numbers) by the organization, in competition among all players in a bingo game.
18. A gaming employee or volunteer shall, immediately before each game is begun unless the description of the game is the same as the preceding game, clearly describe and verbally announce to players the particular arrangement of numbers required to be covered in order to win the bingo game.

19. If an organization conducts a bingo game in which a potential cash prize 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 7), a gaming employee or volunteer shall document the winning card by one of the following methods:
  - a. Use an electronic bingo card verifier.
  - b. Maintain a written record of the called bingo numbers, including the information specified by paragraphs 1 through 7 of subdivision c. The record must document the sequence in which the bingo letters and numbers were actually drawn and called. The record must be retained for three months from the date of the bingo session.
  - c. Audio tape the bingo caller and, at the organization's discretion, video tape the bingo balls drawn during the particular bingo game and retain the tape for at least three months. The audio and video tape may not be erased, altered, or recorded over until the retention period expires. When a player bingos, the gaming employee or volunteer shall state in a clear tone of voice loud enough to be recorded on the audio tape 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.
20. Immediately following the drawing of each ball in a bingo game, a bingo 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.
21. If an electronic random number generator is used in a bingo game, a gaming employee or volunteer shall ensure that the letter and number displayed is visually seen by the players in that room.

22. A gaming employee or volunteer shall announce the letters and numbers on the balls or displayed by an electronic random number generator in exact sequence of the balls drawn from a blower or wire cage or in exact sequence of the letters and numbers displayed by an electronic random number generator.
23. Except for a "bonanza bingo" game, the use of a flashboard is optional. A flashboard used for bonanza bingo must have "bonanza" or another designation conspicuously placed on it that is easily visible to the players.
24. The number and letter displayed on a flashboard or called are not necessarily official. The actual number and letter on the ball drawn or freely awarded (wild numbers) are official.
25. Except for a "bonanza bingo" game, a winner is determined when a predetermined and distinct pattern of drawn or freely awarded numbers appears on a card on the immediately last drawn letter and number and a player has timely called bingo.
26. Immediately upon a bingo player declaring a winning combination of letters and numbers and if the actual or potential cash prize or current retail price of a merchandise prize is greater than one hundred dollars, a gaming employee or volunteer shall state the winning series (card) number in a clear tone of voice loud enough to be heard by the bingo caller. A winning bingo card must be verified by a gaming employee or volunteer and at least one neutral player unless an electronic bingo card verifier is used.
27. 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. A gaming employee or volunteer shall inform the player of the variety of bingo prizes prior to the selection or play by the player.
28. An 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.
29. A gaming employee or volunteer shall allow a player to bingo more than one time on the same bingo card when the organization conducts more than one predetermined and distinct pattern on the same bingo card for continuation games.



30. An 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. A gaming employee or volunteer 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.
31. 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 by a gaming employee or volunteer prior to the bingo session and must be accounted for on the prize register by the organization.
32. 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 if the declared winning bingo is invalid.
33. If an organization is using the cash register receipts (section 99-01-08-07) or ticket receipts (section 99-01-08-08) receipting method, a player's cash register receipts and ticket receipts for bingo must be kept in view at all times. Except for bingo cards a player purchased directly from a floorworker, the player's bingo is void if the player has more bingo cards than that represented by the cash register receipt or ticket receipt.
34. No organization may conduct "bonanza bingo" unless at least all of the following requirements are met:

- a. An organization shall initially draw a predesignated quantity of bingo numbers (for example - forty-five numbers) before the actual playing of the bonanza bingo game.
- b. A bonanza bingo card must be sealed and unpeekable when it is sold to a player.
- c. Bonanza bingo cards can be sold throughout the bingo session. However, no bonanza bingo card may be sold or traded after the actual bonanza bingo game starts which is when the organization calls the next continuous number (for example - forty-sixth number).
- d. Prior to the start of the actual bonanza bingo game, a gaming employee or volunteer shall do a full accounting of the floorworkers' sales of bonanza bingo cards as prescribed by section 99-01-08-10. This accounting requires that floorworkers return unsold "singles" and "discounted sets" of bonanza bingo cards and turn in exchanged (players' partially played trade-in cards) bonanza bingo cards and the cash related to 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, a gaming 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 may win unless all the numbers for the predetermined bingo pattern on the player's bonanza bingo card have been called.
- g. If a player bingos before the next continuous number (for example - forty-sixth number) is called, the player must be awarded the designated prize. During the actual bonanza bingo game, the organization shall call additional numbers, if necessary, until a player successfully bingos and is awarded the designated prize.
- h. A bonanza bingo game may not extend beyond a bingo session.
- i. If an organization's policy permits a player to exchange (trade-in) a partially played bonanza bingo card for a new bonanza bingo card and pay a discounted or exchange card price for the new card, a gaming employee or volunteer shall:

- (1) Uniquely mark each bonanza bingo card to be used during the bingo session by applying at least subparagraphs a and b unless the organization is using another method approved, in writing, by the attorney general to determine the actual original source of a bonanza bingo card and the actual number of bonanza bingo cards sold and exchanged for a bingo session:
  - (a) A gaming employee or volunteer shall validate the card with a mechanical device or rubber stamp with a unique symbol. The validation must identify the card with that particular bingo session for that date.
  - (b) A gaming employee or volunteer shall require the player to write at least the player's name on the face of the exchanged bonanza bingo card.
- (2) Retain the player's exchanged card as part of the daily accounting records of that bingo session and for at least six months.
- (3) Maintain a written record of validation designations and card color combinations, by bingo session.
- (4) Perform a bingo session reconciliation of the bonanza bingo cards, accounting for at least the following:
  - (a) Number of cards taken from inventory which must be physically counted and verified by at least two gaming employees or volunteers. Each gaming employee or volunteer shall legibly sign at least the gaming employee's or volunteer's last name and date that verification.
  - (b) Number of cards sold.
  - (c) Number of cards exchanged, separately maintained for each floorworker, which must be actually recounted by a gaming employee or volunteer who is independent of a gaming employee or volunteer who was, directly or indirectly, involved in completing the floorworker sales report (see section 99-01-08-10). The gaming employee or volunteer who controls the floorworker sales report shall band each floorworker's exchanged bonanza bingo cards separately, identify the banded group, and legibly sign at least the gaming employee's or volunteer's last name and date the identification of the banded group. The floorworker shall also legibly sign at least the floorworker's last name and date the

identification of the banded group of that floorworker's exchanged cards.

- (d) Number of cards returned to inventory which must be physically counted and verified by at least two gaming employees or volunteers. Each gaming employee or volunteer shall legibly sign at least the gaming employee's or volunteer's last name and date that verification.
  - (e) Document any discrepancies and action taken to remedy those discrepancies.
- j. A voided bonanza bingo card must be retained for at least six months.
35. No 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 a disabled player may assist that player.
36. No gaming employee or volunteer 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. A 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. A bingo session is conducted by an organization that has been issued a local permit.
  - c. A 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.
37. No gaming employee or volunteer 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-08-04. Free games prohibited. No organization may allow a person to play in a bingo game for free.

History: Effective April 1, 1992.

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

99-01-08-05. Employees and volunteers age requirement. No organization may allow a person under sixteen years of age to conduct or assist in the conduct of the game of bingo.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-07, 53-06.1-17

99-01-08-06. Receipting method required for recording gross proceeds in bingo games.

1. All gross proceeds from bingo games must be receipted by the organization. Gross proceeds include admissions. Gross proceeds must be receipted by the use of one or a combination of several of the following methods:
  - a. Cash register receipts.
  - b. Ticket receipts.
  - c. Paper bingo cards.
  - d. Floorworker sales report.
  - e. Checkers.
2. Written approval must be obtained from the attorney general for use of any alternate receipting method.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-08-07. Cash register receipts for recording gross proceeds. The cash register receipting method may be used by an organization to record 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. Selling price of the bingo card or package.
  - d. Type of bingo card or package sold (for example, regular, premium, or super).
  - e. Consecutive customer receipt number.
2. A 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. Also, any cash register used must retain its transaction count between uses whether or not its power source is interrupted.
  3. A cash register must have sufficient keys to record separately each type of 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. No cash register cashier may issue a refund to a player for any reason or void a sales transaction. A voided transaction is a cancellation of a sale for any reason. For a refund, the cash register cashier's supervisor shall execute the refund, and initial the refund transaction on the internal cash register tape or prepare a cash payout slip. If the supervisor is not readily available or if the cashier is the supervisor, another gaming employee or volunteer shall execute the refund, and initial the refund transaction on the internal cash register tape or prepare a cash payout slip. For a voided sales transaction, the cash register cashier's supervisor shall initial the void transaction on the internal cash register tape or prepare a void transaction slip. If the supervisor is not readily available or if the cashier is the supervisor, another gaming employee or volunteer shall initial the void transaction on the cash register tape or prepare a void transaction slip. However, this subsection does not prohibit a cash register cashier from executing a void or no sale transaction to access the cash register's cash drawer.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-08-08. Ticket receipts for recording gross proceeds. The ticket receipting method may be used by an organization to record 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 ticket rolls received must be entered in the log upon being received.
4. An 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-08-09. Paper bingo cards for receipting gross proceeds. The paper bingo card receipting method may be used by an organization to record gross proceeds from the sale of paper bingo cards. Paper bingo cards themselves may be used as the receipt required by this rule provided that:

1. A card must have printed on its face both its individual series (card) 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. A card sold represents a specific amount of money which has been paid to the organization.
3. A card containing a certain manufacturer assigned serial number is 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 legibly sign that verification with at least the persons' last names, 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 taken from inventory but not sold must be physically counted and verified by at least two persons who shall legibly sign that verification with at least the persons' last names prior to the cards being returned to inventory. The daily records must include the total number of cards taken from inventory, returned to inventory, and sold (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 (card) number, and ending series (card) number issued as a receipt for each set of cards used. Each card containing the same manufacturer assigned serial number must be issued consecutively. However, when there are two or more faces on one card (for example, a "three-on-one") and therefore, two or more series numbers appear on the card, the lowest series number must be used to determine the beginning number issued and the ending number issued. Each time the series numbering of the cards breaks, a separate entry must be made in the records. Cards which were issued but not sold during a session that bear a series number below the highest numbered card issued must be retained by the organization as part of its daily records as unsold and must be voided.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-08-10. Floorworker sales report for receipting gross proceeds. The floorworker sales report receipting method may be used by an organization to record gross proceeds from the sale of paper bingo cards by floorworkers. A floorworker sales report must be completed by a gaming employee or volunteer who is not a floorworker. For "bonanza bingo" games, the report must contain all the information required by subsections 1 through 12 for each game. For all other bingo games, other than a "bonanza bingo" game, the report must at least contain the information required by subsections 1 through 7 and subsection 11 for each game; and the information required by subsections 8, 9, 10, and 12 must at least 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", including the number of exchanged "bonanza bingo" cards, 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 (includes the number of exchanged "bonanza bingo" cards).
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, 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 a gaming employee or volunteer who is not a floorworker.
12. After the floorworker sales report is completed, the gaming employee or volunteer who controlled the report shall legibly sign at least the gaming employee's or volunteer's last name and date this report.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-08-11. Use of checkers for recording gross proceeds. The checker receipting method 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. 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 at least the checker's legible last name 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.
  - 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.
  - f. Amount of actual cash profit for the bingo session computed as the total amount of cash 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 f and the total adjusted gross proceeds computed by subdivision e. Cash is short if the adjusted gross proceeds exceeds 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 at least the cashier's legible last name and date.
3. An organization may be required to use a checker control report and a cashier receipting report that account for each bingo session's activity by floorworker if it is determined by the attorney general that the organization's bingo activity has resulted in abnormal cash shortages.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-08-12. Register required for prizes.

1. All prizes issued in bingo games, including a bonus prize awarded under subsection 31 of section 99-01-08-03, must be accounted for by a gaming employee or volunteer on a register at the time the prize is issued to each winner.
2. A gaming employee or volunteer 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.
  - 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 a gaming employee or volunteer makes a record of the win for this cash prize, the gaming employee or volunteer does not need to include the winner's street address, city, state, or zip code on the prize register.
3. Total amount of cash and merchandise prizes awarded.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-08-13. Record of the win. When a player wins a cash prize greater than one hundred dollars, a gaming employee or volunteer shall make a record of the win. However, the attorney general may require an 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 mechanically or electronically sequentially numbered receipt, and the check or receipt must include at least the following information:

- 1. A gaming employee or volunteer 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 from 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.

g. Unless an 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 gaming employee or volunteer directly from the payee's pictured driver's license. If the payee does not have a pictured driver's license, the gaming employee or volunteer 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 gaming employee or volunteer 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 gaming employee or volunteer may not pay out any prize unless and until the payee has fully and accurately furnished to the gaming employee or volunteer 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 gaming employee or volunteer shall mail the cash prize to the payee.

h. Legible signature of the gaming employee or volunteer who completed the record of the win.

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

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-11, 53-06.1-17

99-01-08-14. 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 99-01-08-12 or 99-01-08-13 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 99-01-08-12 or 99-01-08-13. 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 a gaming employee or volunteer 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 gaming employee or volunteer shall deny the player the cash prize and notify the attorney general or a local law enforcement agency.
3. An 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-08-15. Reconciliation of inventory control records of paper bingo cards.

1. An organization shall, on at least a quarterly basis, reconcile (compare) its inventory control records (see subdivision e of subsection 2 of section 99-01-08-16) of paper bingo cards that are recorded as being in inventory to paper bingo cards that are actually in inventory. A gaming employee or volunteer shall physically count the actual paper bingo cards in inventory, compare this count to the inventory control records, and resolve any difference. The physical count must be performed by a person other than the person who is primarily responsible for safeguarding the physical inventory of the paper bingo cards.
2. A gaming employee or volunteer 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-08-16. Recordkeeping system required.

1. A licensed organization shall retain daily accounting records with regard to bingo games for three years from the end of the quarter in which the 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. A 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. The gross proceeds are to be supported by proper receipting records.
  - b. Amount paid out for cash prizes and the actual cost of merchandise prizes for each bingo session.
  - c. Records documenting the 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. Each person of the two-person verification team shall independently count the cash on hand in the immediate presence of the other person. When both persons agree with the count of the cash, each person shall legibly sign at least the person's last name and date that verification.
  - d. A summary of gross proceeds, prizes (cash and merchandise), adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit. The summaries of all bingo sessions conducted during a quarter must reconcile to the bingo activity reported on the North Dakota gaming tax return.
  - e. Inventory control records of paper bingo 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 99-01-08-13.
  - g. Number of players in attendance, time the attendance count was taken, and a copy of the schedule of games and their prizes.
3. All daily activity records must be completed by use of a nonerasable ink pen. Except for the application of subsections 4 and 8 of section 99-01-08-10, the daily records must be legibly signed with at least the person's last name and dated by the person completing the record.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-08-17. 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 99-01-09-13 (raffles), 99-01-10-14 (charitable gaming tickets and punchboards), 99-01-11-07 (professional sports pools), 99-01-12-30 (twenty-one), 99-01-13-24 (poker), 99-01-14-06 (calcuttas), 99-01-15-28 (paddlewheels), and 99-01-16-21 (electronic-mechanical charitable gaming ticket dispensing devices). 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

CHAPTER 99-01-09  
RAFFLES

Section	
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99-01-09-01. 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-09-02. 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). A discounted ticket must be specifically designated as a discounted ticket on the raffle ticket and on the ticket's stub or other detachable section. The number of discounted tickets must be predetermined and separately issued and accounted for when issued to the ticket sellers for sale.

2. 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.
3. All tickets for use in any raffle must have a stub or other detachable section, be consecutively numbered, and be accounted for separately. Except for the application of section 99-01-09-06, the ticket stub or other detachable section of the raffle ticket must bear a duplicate number corresponding to the number on the raffle ticket and must contain the purchaser's name, complete address, and telephone number. For a raffle conducted by a licensed organization, the consecutive raffle ticket numbers must be mechanically or electronically imprinted. For a raffle conducted by an organization which has been issued a local permit, the consecutive raffle ticket numbers may be manually imprinted. The detachable section of the ticket must be issued, as a receipt, to the purchaser.
4. Except as provided by subdivision d of subsection 4 of North Dakota Century Code section 53-06.1-03, no gaming employee or volunteer may sell raffle tickets on a site where a different organization is licensed or is issued a local permit to conduct games of chance.
5. Except for the application of section 99-01-09-06, 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 on all promotional material concerning the raffle.
6. In conducting a drawing in connection with any raffle, a 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. The 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 drawn.
7. An 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.

8. For a calendar raffle, the raffle ticket stub of each raffle ticket purchased by a player must be entered in all the raffle drawings conducted from the time the player purchased the raffle ticket through the time the calendar raffle is concluded. No organization may conduct a calendar raffle for other than the fiscal year beginning July first and ending June thirtieth.
9. 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 winners in writing and legibly sign and date the document attesting to the result of the raffle drawing occasion.
10. In conducting a raffle drawing occasion, a gaming employee or volunteer shall draw for the highest valued prize first. Then, if there is more than one prize, the gaming employee or volunteer shall continue drawing for the prizes in the order of descending value through the last prize drawing of the smallest valued prize. A prize is valued at its cash value or, if the prize is a merchandise prize, at its current retail price. An organization may defer announcing the names of the winning players and respective prizes until after all the prize drawings have occurred and may make the announcement in any sequence. However, this rule does not apply when an organization adopts a written house policy to place a winning player's stub or other detachable section of a raffle ticket immediately back into a receptacle to potentially be drawn for another prize after it has already been drawn for a prize.
11. No organization may print "donation", "suggested donation" or print any other word or phrase on a raffle ticket that implies or expresses to a purchaser that a raffle ticket purchase is a charitable contribution or that the price of the ticket is not required to be paid.
12. No person who purchased a raffle ticket may resell the ticket.
13. No gaming employee or volunteer may sell a raffle ticket in North Dakota unless the organization is licensed by the attorney general or is issued a local permit by a local governing body. For example, an organization located in another state may not sell a raffle ticket in North Dakota.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-09-03. Raffle prizes prohibited.

1. No raffle prize may consist in whole or in part of any interest in real estate, 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. Cash prizes may be awarded in raffles conducted under this chapter provided a single cash prize does not exceed one thousand dollars, and provided that no organization may award cash prizes totaling more than three thousand dollars in the aggregate during one day.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-09-04. Raffle merchandise prizes.

1. An organization conducting a raffle in which merchandise is to be awarded shall have paid for in full or otherwise become the owner, without lien or interest of others, of that merchandise prior to the drawing at which the winners of 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, for example, automobiles, motorcycles, boats, and snowmobiles, with the North Dakota department of transportation or North Dakota game and fish department.
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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-09-05. Disclosure of prizes and rules. Except for the application of section 99-01-09-06, at least the following information must be clearly preprinted upon each raffle ticket prior to being sold:

1. Name of organization.
2. Ticket number.

3. Price of the ticket. If the ticket is a discounted ticket, the discounted price 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. However, if the organization is awarding a certain number of minor prizes that, due to insufficient space, cannot be listed on the ticket, the organization must indicate the actual number of minor prizes on the ticket or provide each ticket purchaser with a separate list of the minor prizes. A minor prize is a prize that has a current retail price not exceeding ten dollars.
6. Name of the licensing or authorizing authority.
7. Attorney general license number or city or county local 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 or is not liable for sales or use tax on a merchandise prize.
12. A statement that the ticket may not be resold.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-09-06. 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 must be 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 of the raffle is not required to be immediately present when the raffle drawing is conducted. However, the winner shall claim the prize within one hour of the time the drawing is held by redeeming the winning raffle ticket on the site. Otherwise, the winner may not claim the prize. If the raffle prize is unclaimed, the organization shall conduct a second prize drawing, or more, until the raffle prize is claimed. The organization shall conduct the drawings according to this rule. A statement setting forth the approximate time of the drawing and the one-hour redemption requirement must be on all promotional material concerning the raffle and must be posted in a conspicuous location on the site.
7. A licensed 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. This rule does not apply to a local permit.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-09-07. 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, an 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.
  - c. The raffle drawing date was to coincide with a scheduled special event which was rescheduled.
2. An organization shall, within seven days of the raffle drawing, notify the winner, in writing, of the raffle prize and arrange the transfer of the prize to the winner. However, for a cash prize greater than one hundred dollars, the organization must complete a record of the win prior to transferring the cash prize to the winner. If a raffle prize remains unclaimed by the winner for thirty days following the date of the written notification and the organization has made a good faith effort to contact the winner for redemption of the prize, the organization may retain the prize, have a second prize drawing, or award it in another raffle.
  3. This section does not apply to raffle activity of double admission tickets (section 99-01-09-06).

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-09-08. 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:

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	$(100/800)$	$= \$ 62.50 -$	0	$= \$ 62.50$	\$100.00	(\$ 37.50)
2	800	$(200/800)$	$= 200.00 -$	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. 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. If the expenses are reported in the quarters in which the prize drawings are held, the expenses must be computed as follows:

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	
		x	=		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 April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-17

99-01-09-09. Register required for prizes.

1. All prizes issued in a raffle drawing occasion, including the use of double admission tickets, must be accounted for by an organization on a register at the time the prize is issued to each winner.
2. An 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.
3. Total amount of cash and merchandise prizes awarded.

History: Effective April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-17

99-01-09-10. Record of the win. When a player wins a cash prize greater than one hundred dollars, a gaming employee or volunteer shall make a record of the win. However, the attorney general may require an 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 mechanically or electronically

sequentially numbered receipt and the check or receipt must include at least the following information:

1. A gaming employee or volunteer 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.
  - c. Amount of the cash prize.
  - d. Date of the cash prize payout if this date is different from the date of the raffle drawing.
  - e. Winning raffle ticket number.
  - f. Full name, street address (if available) or rural route or post-office box number, city, state, and zip code of the payee.
  - g. Unless an 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 gaming employee or volunteer directly from the payee's pictured driver's license. If the payee does not have a pictured driver's license, the employee or volunteer 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 gaming employee or volunteer 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 gaming employee or volunteer may not pay out any prize unless and until the payee has fully and accurately furnished to the gaming employee or volunteer 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 gaming employee or volunteer shall mail the cash prize to the payee.
  - h. Legible signature of the gaming employee or volunteer who completed the record of the win.
2. After the record of the win is completed by the gaming employee or volunteer and unless the payee lives in a city

different from 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-09-11. 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 99-01-09-09 or 99-01-09-10 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 99-01-09-09 or 99-01-09-10. 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 a gaming employee or volunteer 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 gaming employee or volunteer shall deny the player the cash prize and notify the attorney general or a local law enforcement agency.
3. An 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-09-12. Recordkeeping system required.

1. Except as required by subdivision f of subsection 2, a licensed organization shall retain daily accounting records



with regard to raffles for three years from the end of the quarter in which the 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:
  - a. Records documenting the issuance of single and discounted raffle tickets, including dates, ticket seller's name, quantity issued, range of raffle ticket numbers issued to 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 99-01-09-10.
  - h. A summary of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit. The summaries of all raffle drawing occasions conducted during a quarter must reconcile to the raffle activity reported on the North Dakota gaming tax return.
  - 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.
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, and be legibly

signed with at least the person's last name and dated by the person completing the record.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-09-13. 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. Also, in regard to a calendar raffle, the gross proceeds received must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day the organization receives the gross proceeds from the raffle ticket seller. 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, 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 99-01-08-17, (bingo), 99-01-10-14 (charitable gaming tickets and punchboards), 99-01-11-07 (professional sports pools), 99-01-12-30 (twenty-one), 99-01-13-24 (poker), 99-01-14-06 (calcuttas), 99-01-15-28 (paddlewheels), and 99-01-16-21 (electronic-mechanical charitable gaming ticket dispensing devices). 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

#### CHAPTER 99-01-10 CHARITABLE GAMING TICKETS AND PUNCHBOARDS

Section	
99-01-10-01	Charitable Gaming Ticket and Punchboard
99-01-10-02	Excise Tax
99-01-10-03	Conduct and Play
99-01-10-04	State Gaming Stamp Number and Game Serial Number

99-01-10-05	Special Restrictions
99-01-10-06	Gross Proceeds and Cash Banks - Restriction
99-01-10-07	Electronic-Mechanical Charitable Gaming Ticket Dispensing Device
99-01-10-08	Electronic Punchboard
99-01-10-09	Record of the Win
99-01-10-10	Person Prohibited From Falsifying Record of the Win
99-01-10-11	Disposal of Games
99-01-10-12	Reconciliation of Inventory Control Records
99-01-10-13	Recordkeeping System Required
99-01-10-14	Actual Cash Profit Bank Deposit Required by Licensed Organizations

99-01-10-01. Charitable gaming ticket and punchboard.

1. A "charitable gaming ticket" is a single-folded or banded ticket (jar ticket) or is a two-ply or three-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. Unless otherwise stated, a charitable gaming ticket and jar ticket are used interchangeably in this chapter. 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 deal of charitable gaming tickets, including a club special and tip board, includes the use of a seal 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.

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 charitable gaming tickets or stapled sets of jar 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 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 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 lines are all purchased, the seal is removed to reveal a number indicating which of the predesignated numbers is the winning number. 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. Cash or merchandise prizes can be awarded. The maximum seal cash prize value is one hundred dollars. The maximum seal merchandise prize value, at current retail price, is five hundred dollars. 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 those numbered slips of paper from 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 gaming employee or volunteer for the prize stated on the flare. No paper-type punchboard may be taken out of play once 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. The maximum merchandise prize value, at current retail price, 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 gaming employee or volunteer for the prize stated on the ticket and punchcard. No punchcard may be taken out of play once 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. 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. The maximum merchandise prize value, at current retail price, is five hundred dollars. If a merchandise prize is awarded, there must be placed conspicuously on the device the following information which must be completed by the organization:

RETAIL VALUE OF PRIZE        \$ \_\_\_\_\_

History: Effective April 1, 1992.

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

99-01-10-02. 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 provided by the distributor.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-10-03. Conduct and play.

1. 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 must be commingled in a receptacle, including a coin-operated dispensing device, subject to all of the following provisions:
  - a. Two or more deals must be placed in play and be thoroughly intermixed at the same time at the start of a commingled game. Notwithstanding the application of subsection 16, when a predetermined minimum number or minimum range of numbers of winning charitable gaming tickets, through a certain level of denomination selected by an organization, remain in the game as unredeemed, and additional deal is immediately 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 16, 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 99-01-10-13).
  - 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, an organization may close a game at the organization's discretion. However, the organization cannot close the game unless all the top tier winning tickets have been redeemed. 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. The organization shall close the game at least at the end of each quarter or within five calendar days prior to the end of each quarter. The organization may place a new commingled game in play for the next quarter within five calendar days prior to the start of that 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 an organization did not file a gaming tax return for the previous fiscal year, the organization may not close a commingled game unless at least fifty deals have been added to the game, the game's actual gross



proceeds is at least thirty-five thousand dollars, the game has been in play for at least twenty-five consecutive calendar days, the organization discontinues gaming at the site, or the attorney general authorizes closure of the game due to security reasons. However, if fifty deals have been added to the game, if the game's actual gross proceeds is at least thirty-five thousand dollars, or if the game has been in play for at least twenty-five consecutive calendar days, the organization cannot close the game unless all the top tier winning tickets have been redeemed. Regardless of the restrictions of this subdivision, the organization shall close the game at least at the end of each quarter or within five calendar days prior to the end of each quarter. The organization may place a new commingled game in play for the next quarter within five calendar days prior to the start of that quarter.

- d. Deals must be identical as to a particular type, name of game, and number of charitable gaming tickets.
- e. A deal must be manufactured with at least two top tier denomination winning charitable gaming tickets.
- f. Only the flare of one deal of a commingled game may have a last sale prize feature.
- g. A deal must be identified by its own flare displaying the state gaming stamp and game serial number.
- h. Flares applicable to each deal must be identical as to:
  - (1) Name of game.
  - (2) Price per ticket.
  - (3) Number of prizes except for the one deal that may have a last sale feature.
  - (4) Denominations of prizes.
  - (5) Winning number, symbol, or set of symbols.
- i. The flare for at least one deal of a commingled game in play must be displayed in the immediate vicinity so that the winning number, symbol, or set of symbols and denomination of prizes are easily visible to players. However, in lieu of displaying at least one flare, an 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 and shade 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. If the indicator for adding a deal to a game has been reached and an organization does not have charitable gaming tickets of the same primary color and shade to add to the game, the organization shall temporarily suspend the conduct of the game until the organization procures additional special colored deals or the organization may close or play out the game with authorization from the attorney general. If twenty-five consecutive calendar days elapse since the organization placed the game in play and the organization has not yet procured additional special colored deals and all top tier winning tickets have been redeemed, the organization may close the commingled game. If twenty-five consecutive calendar days elapse since the organization placed the game in play and the organization has not yet procured additional special colored deals and all top tier winning tickets have not been redeemed or it is not the end of the quarter, the organization shall reactivate the game within the quarter and conduct the game until all the top tier winning tickets have been redeemed or it is the end of the quarter, whichever occurs first.
  - k. Except for a deal's game serial number, the charitable gaming tickets of the deals of a commingled game must not have any visual differences.
- 3. The results of a commingled game must be reported on the gaming tax return for the quarter in which the commingled game was closed.
  - 4. An organization is prohibited from conducting commingled games of charitable gaming tickets if the attorney general determines that the conduct of commingled games has resulted in abnormal cash shortages.
  - 5. A 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 conducted.

6. No gaming employee or volunteer may modify or otherwise change a 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.
7. No gaming employee or volunteer 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.
8. No gaming employee or volunteer may place a deal in play in the original packages, boxes, bags, or other containers in which the deal was received from a distributor.
9. When a deal is received from a distributor in two or more packages, boxes, bags, or other containers, a gaming employee or volunteer shall place in play at the same time and in the same receptacle all of the deal's charitable gaming tickets from the respective packages, boxes, bags, or other containers.
10. No gaming employee or volunteer may display or operate 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.
11. No gaming employee or volunteer may place a deal or punchboard in play unless the cost for each charitable gaming ticket or punchboard punch is clearly posted on the flare.
12. No gaming employee or volunteer may sell a charitable gaming ticket or punchboard punch for a price different from the price stated on the deal's or punchboard's flare.
13. No gaming employee or volunteer may place a deal or punchboard in play when the value of the prizes to be awarded differs from the flare as received from a distributor.
14. An 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 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 (see subsection 15).
  - e. Information, if any, authorized by subdivisions a and b of subsection 17, that an 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 18).
15. An 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 knowingly pay a prize to any player who is redeeming a winning charitable gaming ticket after the time limit set by this policy.
16. An organization may, at its discretion, add a deal to a commingled game if the organization suspects that a player is intentionally not redeeming a winning charitable gaming ticket or if the play of the game is inactive. However, if there are approximately two hundred fifty tickets remaining in the game, the game cannot yet be closed, and the indicator for adding a deal to the game has not yet been reached, the organization shall add a deal to the commingled game.
17. 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, except for the information referenced by subdivision a or b, or both, which the organization may provide for a commingled game unless the organization closes a commingled game (see subsection 34). If the organization provides this information, this special policy must be posted in accordance with subsection 14:

- a. The minimum number or a minimum range of numbers of winning charitable gaming tickets, through a certain level of denomination selected by an organization, that remain in the game as unredeemed. No organization may guarantee the accuracy of this information. 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.

Example: A commingled game in which an organization considers the top three prize tier levels as top tier winning tickets when the following six denominations of prizes comprise a standard deal:

4 @ \$200  
 4 @ \$100  
 4 @ \$ 50  
     \$ 10  
     \$ 5  
     \$ 2

An organization may post information about this game according to any of the following four alternatives:

- |                                      |  |
|--------------------------------------|--|
| (1) Minimum Number by Denomination:  | To the best of our knowledge there is a minimum of 4 - \$200 winning tickets, 4 - \$100 winning tickets, and 4 - \$50 winning tickets in this game at all times. |
| (2) Minimum Number in the Aggregate: | To the best of our knowledge there is a minimum of 12 winning \$200, \$100, and/or \$50 tickets in this game at all times (denominations must be referenced).    |
| (3) Minimum Range by Denomination:   | To the best of our knowledge there is a minimum of 4 to 8 winning \$200 and \$100 tickets each, and 8 winning \$50 tickets in this game at all times.            |
| (4) Minimum Range in the Aggregate:  | To the best of our knowledge there is a minimum of 12 to   |

14 winning \$200, \$100, and/or \$50 tickets in this game at all times (denominations must be referenced).

- b. The number of winning charitable gaming tickets, through a certain level of denomination selected by an organization, remaining in the game as unredeemed. This number may be posted for each denomination or in the aggregate 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. For example, the organization may post the specific number of winning tickets, by one or all denominations, determined by the organization, that remain unredeemed in the game. The posted information must be updated as winning tickets are redeemed and as new deals are added to the game. The organization shall post a sign in accordance with subsection 14 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.
18. No jar operator may sell more than two hundred fifty charitable gaming tickets to a 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. An 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.
19. No jar operator may unilaterally or in collusion with another person selectively choose certain charitable gaming tickets from the receptacle based on the ticket's 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 inside information.
20. 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 this section, it is a violation of subsection 3 of North Dakota Century Code section 53-06.1-16.1.

21. If the attorney general believes that an organization, gaming employee or volunteer 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 a 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 an organization from providing players with information allowed by subdivisions a and b of subsection 17.
  - d. Prohibit tipping, require pooling of tips, or require a tip report to be filed.
  - e. Require commingled game records to account for the following information when a deal is added to a commingled game and when the last shift ends for each day:
    - (1) Actual cash profit.
    - (2) Specific number of charitable gaming tickets redeemed for prizes, by denomination of prize.
22. No jar operator may permit a player to physically handpick a charitable gaming ticket from a receptacle or honor a player's request to select a specific charitable gaming ticket. However, the player may suggest a general area of the receptacle for the jar operator to select a charitable gaming ticket from. For example, the player may ask for a charitable gaming ticket from the middle of the receptacle.
23. No gaming employee or volunteer may freeze a game for any player or group of players. Except for the application of subsection 2 of section 99-01-05-13, an organization shall



allow all bona fide players to play games of charitable gaming tickets.

24. No gaming employee or volunteer may assist a player in opening purchased charitable gaming tickets except in the assistance of a disabled player.
25. 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.
26. No jar operator may knowingly pay a prize to a player who is redeeming a winning charitable gaming ticket when the player has left the physical area of the gaming site where the game is in play.
27. 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, an 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 10 of section 99-01-06-08). 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. The organization may staple together the proper number of loose unstapled jar tickets of the same game serial number or different game serial numbers of a commingled game to sell at the selling price of a stapled set.
28. A jar operator shall deface the winning number, symbol, or set of symbols of a winning charitable gaming ticket and punchboard punch when it is redeemed, regardless of the ticket's or punch's denomination.

29. When a commingled game is being closed, an organization may continue the game in play regardless if all of the game's top tier and consolation winning charitable gaming tickets have been redeemed.
30. If an 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.
31. 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.
32. Except when an organization closes a commingled game in accordance with subdivisions b or c of subsection 2, no gaming employee or volunteer may allow a player to buy out a commingled game.
33. An 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 fifty deals to the commingled game.
34. Unless an 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 information referenced by subdivision a or b, or both, of subsection 17. When there are four or more winning charitable gaming tickets, through a certain level of denomination selected by the organization, remaining in the game as unredeemed, the organization may, at its discretion, discontinue posting the information referenced by subdivision a or b, or both, of subsection 17.

35. If a commingled game that has a last sale feature is sold out, a jar operator 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.
36. 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.
37. 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, a gaming employee or volunteer shall immediately remove that prize from any display and provide it to the winner.
38. 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, all numbered lines have been won by players who have registered their names, all of the top tier of winning punches have been redeemed, or an organization is transferring the game to another site on a rotating site schedule. If a club special, tip board, seal board, or punchboard has been in play for at least ninety days and all of the top tier 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. If the organization is discontinuing gaming at a site and a game of charitable gaming tickets, club specials, tip board, seal board, or punchboard which is in play does not qualify to be taken out of play, the organization shall transfer the game to another gaming site unless the organization first requests and receives written permission from the attorney general to take the game out of play. The organization shall report a deal of charitable gaming tickets, club special, tip board, seal board, and punchboard on the North Dakota gaming tax return for the gaming site at which the game was ultimately closed.

39. Except for the prize payout of a last sale prize feature, no jar operator may pay, from gaming funds or any other source, a prize to a player unless the player redeems an actual winning charitable gaming ticket from the commingled game actually conducted at that gaming site.
40. If a jar operator leaves a jar bar unattended, the jar operator shall safeguard the organization's games, cash, and daily activity records.
41. A gaming employee or volunteer may refuse to sell charitable gaming tickets to a person the organization believes is involved in soliciting or receiving inside information.
42. For determining the prize value of whether a record of the win (see section 99-01-10-09) 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.
43. No organization may publicly display an actual redeemed winning charitable gaming ticket. However, a jar operator may show a player, who is unfamiliar with the game of charitable gaming tickets, a redeemed winning charitable gaming ticket provided the charitable gaming ticket is defaced and remains in the physical possession of the jar operator.
44. If an organization believes that a deal is defective, the organization shall follow guidelines prescribed by the attorney general.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-10-04. State gaming stamp number and game serial number.

1. No gaming employee or volunteer may modify or otherwise change the game serial number that was written on the state gaming stamp by the distributor.
2. When a deal of charitable gaming tickets is added to a commingled game or a club special, tip board, seal board, or punchboard is placed in play, a jar operator shall verify that the actual game serial number of the deal's charitable gaming ticket or of the punchboard is the same as the game serial number written on the state gaming stamp. After verifying the game serial number, the jar operator shall acknowledge the verification in writing by initialing beside the game serial number on the commingled game's daily activity record on which the game serial number has been recorded or initialing the respective flare.

3. No gaming employee or volunteer may intentionally place a deal or paper-type punchboard in play unless the game serial number of that deal or punchboard corresponds to the game serial number written on the state gaming stamp by the distributor. If the two numbers do not correspond, the gaming employee or volunteer shall immediately:
  - a. Notify the distributor from whom the game was purchased.
  - b. Complete a standard form prescribed by the attorney general. An organization shall attach this form to the flare of the deal or punchboard in play.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-10-05. Special restrictions.

1. No gaming employee or volunteer 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 that deal or punchboard as received from a 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 a manufacturer's or distributor's permanent adhesive seal broken on the manufacturer's games' package, box, or other container when that game was received from the distributor. An 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, 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 subsection does not apply to seal boards.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-10-06. Gross proceeds and cash banks - Restriction. Gross proceeds for a commingled game, club special, tip board, seal board, and punchboard must be separately maintained while the game is in play. Cash banks 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 game's actual cash profit. A cash bank must meet either of the following three requirements:

1. A separate cash bank must be maintained for each commingled game, club special, tip board, seal board, and punchboard in play. If the game's cash bank needs a cash replenishment and another game's cash bank or nongaming funds are used as a source of cash, 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 the information referenced by subdivisions a through h of subsection 2.
2. A central cash bank must be maintained for use by several games in play. 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 games in play.
  - a. A 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 a charitable gaming ticket, or punchboard punch.
  - (4) Code representing the type of sale or prize redemption.
  - (5) Consecutive customer receipt number.
- b. A 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. A cash register used must retain its transaction count between uses whether or not its power source is interrupted.
  - c. A 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 or punchboard punches, the internal cash register tapes from other uses must also be retained for at least three years.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-10-07. Electronic-mechanical charitable gaming ticket dispensing device. A commingled game of charitable gaming tickets may be dispensed from an electronic-mechanical charitable gaming ticket dispensing device if at least all the following requirements are met:

1. A gaming employee or volunteer, in using a device, shall comply with this article, including formal directives of the attorney general, regarding the conduct and play of charitable gaming tickets, including:



- a. Affixing a flare to the interior of a device, in an enclosed display case attached to the exterior of a device, or on an adjacent wall.
  - b. Using proper cash banks (see section 99-01-10-06).
  - c. Placing two or more deals of charitable gaming tickets in play at the same time.
  - d. Establishing a time limitation for redeeming a winning ticket (see subsection 15 of section 99-01-10-03).
  - e. Not paying a prize to a player who is redeeming a winning ticket when the player has left the physical area of the gaming site.
  - f. Maintaining a recordkeeping system (see section 99-01-10-13).
2. A gaming employee or volunteer shall make a dispensing device inoperable for use unless the following requirements are met:
    - a. A gaming employee or volunteer is on the site available to redeem a winning ticket.
    - 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. A gaming employee or volunteer shall maintain key control of a dispensing device.
  4. A gaming employee or volunteer may not allow a person under twenty-one years of age to purchase a charitable gaming ticket from a 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).

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-10-08. Electronic punchboard. An electronic punchboard may be used if at least all the following requirements are met:

1. A gaming employee or volunteer in using an electronic punchboard shall comply with this article, including formal directives of the attorney general, regarding the conduct and play of punchboards, including:

- a. Requiring payment in full from a player prior to the player's play (see section 99-01-05-23).
  - b. Using a proper cash bank (see section 99-01-10-06).
  - c. Establishing a time limitation for redeeming a winning ticket (see subsection 15 of section 99-01-10-03).
  - d. Not paying a prize to a player who is redeeming a winning ticket the player has left the physical area of the gaming site.
  - e. Maintaining a recordkeeping system (see section 99-01-10-13).
2. A gaming employee or volunteer shall make an electronic punchboard inoperable for use unless the following requirements are met:
    - a. A gaming employee or volunteer is on the site available to redeem a winning ticket.
    - 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. A gaming employee or volunteer shall maintain physical control of an electronic punchboard.
  4. A gaming employee or volunteer may not allow a person under twenty-one year 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).

History: Effective April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-17

99-01-10-09. Record of the win. When a player wins a last sale prize feature, a seal prize value of any cash amount from a club special, tip board, seal board, or punchboard, a cash prize of fifty dollars or greater from the play of a punchboard, or a cash prize of more than one hundred dollars from the play of a commingled game of charitable gaming tickets, a gaming employee or volunteer shall make a record of the win. However, the attorney general may require an 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 either a sequentially numbered check drawn from the general gaming bank account or a mechanically or electronically sequentially numbered receipt. The check or receipt must include at least the following information:

1. A jar operator 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. Name of the game.
  - e. Amount of the cash prize.
  - f. Date of the cash prize payout.
  - g. If the payee is 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 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 forms of identification. The jar operator 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 jar operator may not pay out any prize unless and until the payee has fully and accurately furnished to the jar operator 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 gaming employee or volunteer shall mail the cash prize to the payee.
  - i. Legible signature of the jar operator who completed the record of the win.
2. After a 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. Unless the prize is for a last sale prize feature, the jar operator shall legibly print, in ink, the check or receipt number on the winning charitable gaming ticket, punchboard punch, or seal board.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-10-10. 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 99-01-10-09 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 99-01-10-09. 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 a gaming employee or volunteer determines that a player has falsified, attempted to falsify, or conspired with another person to falsify the record of the win, the gaming employee or volunteer shall deny the player the cash prize and notify the attorney general or a local law enforcement agency.
3. An 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-10-11. Disposal of games. An organization shall control the disposal of played deals of charitable gaming tickets, including club specials, tip boards, and seal boards, and punchboards when the retention period expires. The disposal must be by a manner that will assure complete destruction such as shredding, burying, or burning.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-10-12. Reconciliation of inventory control records.

1. An organization shall, on at least a quarterly basis, reconcile (compare) its inventory control records (see subdivision b of subsection 4 of section 99-01-10-13) of deals of charitable gaming tickets, including club specials, tip boards, and seal boards, and punchboards that are recorded as being in play and in inventory to deals and punchboards that are actually in play and in inventory. A gaming employee or volunteer shall physically count the actual deals and punchboards in play and in inventory, compare this count to the inventory control records, and resolve any difference. The physical count must be performed by a person other than the person who is primarily responsible for safeguarding the physical inventory of the deals and punchboards.
2. A gaming employee or volunteer 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-10-13. Recordkeeping system required.

1. Except as provided by subdivisions a and b of subsection 2 and subdivision a of subsection 3, an organization shall retain daily accounting records of a commingled game of charitable gaming tickets, club special, tip board, seal board, and punchboard for three years from the end of the quarter in which the 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. A recordkeeping system must include at least the following items for each commingled game:
  - a. Flares, with the state gaming stamps affixed, together with all redeemed winning charitable gaming tickets and all unopened and unsold charitable gaming tickets. The redeemed winning and the unsold charitable gaming tickets are not required to be segregated by game serial number. The organization may not open any unsold or defective charitable gaming tickets. The records referenced by this subdivision must be retained by the organization for one year from the end of the quarter in which the 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.
  - b. For redeemed winning tickets of a commingled game, an 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. Records documenting the activity of 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 (jar tickets) or other container, by date, for retention purposes. This accounting must include the number of winning tickets, by each denomination of prize, and the total value of these tickets for all denominations of prizes since the immediate preceding deal was added to the commingled game. Except for the application of subsection 16 of section 99-01-10-03, this accounting is done when an additional deal is added to the commingled game and when the organization closes a commingled game. The accounting may be done at the gaming site or home office, at the convenience of the organization.
  - 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. A 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 reason why the game was closed.
4. A 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. Each person of the two-person verification team shall independently count the cash on hand in the immediate presence of the other person. When both persons agree with the count of the cash, each person shall legibly sign at least the person's last name and date that verification.
  - b. Inventory control records must include at least the name of game, 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 game, by gaming stamp number and game serial number. Unless an organization has only one site which is the location of the organization's home office, the 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.
  - c. Record of the win as required by section 99-01-10-09.
  - d. A summary of 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. The summaries of all commingled games, club specials, tip boards, seal boards, and punchboards conducted during a quarter must reconcile to the charitable gaming ticket and punchboard activity reported on the North Dakota gaming tax return.

- e. All daily activity records must be completed by use of a nonerasable ink pen, be readily available at the site until the game is closed, and be legibly signed by at least the person's last name 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 8 of section 99-01-20-23) 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-10-14. Actual cash profit bank deposit required by licensed organizations.

- 1. For a club special, tip board, 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 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, calculated according to subdivisions a and b, 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 consistently 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	<u>150</u>
Actual cash profit available for deposit	\$810
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	<u>8</u>
Actual cash profit to be deposited	\$800

Actual cash profit to be carried over to the next day's activity (\$810 - 800)	\$ 10
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However, if a commingled game was closed at a gaming site that meets the criteria of subdivision b of subsection 2 of section 99-01-10-03, the organization may calculate the actual cash profit bank deposit according to either subsection 1 or 2.

3. For a 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 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 99-01-08-17 (bingo), 99-01-09-13 (raffles), 99-01-11-07, (professional sports pools), 99-01-12-30 (twenty-one), 99-01-13-24 (poker), 99-01-14-06 (calcuttas), 99-01-15-28 (paddlewheels), and 99-01-16-21 (electronic-mechanical charitable gaming ticket dispensing devices). 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 April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-17

CHAPTER 99-01-11  
 PROFESSIONAL SPORTS POOLS

Section	
99-01-11-01	Sports Pool
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99-01-11-01. Sports pool. "Sports pool" is a sheet of paper, cardboard, or similar material on which is printed lines or a grid of squares. The conduct of a sports-pool board is the professional sporting event and the prize payout.

1. A sports-pool board may be either:
  - a. Ten-number sports-pool board divided into ten horizontal lines arranged in a column. Along the left side of the column the numbers zero, one, two, three, four, five, six, seven, eight, and nine are randomly assigned to each of the ten lines.
  - b. Twelve-number sports-pool board divided into twelve horizontal lines arranged in a column. Along the left side of the column the numbers one, two, three, four,

five, six, seven, eight, nine, ten, eleven, and twelve are randomly assigned to each of the twelve lines. This type of board is used for a professional boxing event.

- c. Fifteen-number sports-pool board divided into fifteen horizontal lines arranged in a column. Along the left side of the column the numbers one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen are randomly assigned to each of the fifteen lines. This type of board is used for a professional boxing event.
- d. Twenty-five-number sports-pool board divided equally into twenty-five squares consisting of five rows of squares running both horizontally and vertically. Along the exterior line on the top of the master square, the numbers zero, one, two, three, four, five, six, seven, eight, and nine are randomly assigned, two numbers to each of the rows (for example, 4-7). The same procedure is applied to the left side of the master square for the horizontal rows.
- e. One hundred-number sports-pool board divided equally into one hundred squares consisting of ten rows of squares running both horizontally and vertically. Along the exterior line on the top of the master square, the numbers zero, one, two, three, four, five, six, seven, eight, and nine are randomly assigned to each of the vertical rows. The same procedure is applied to the left side of the master square for the horizontal rows.

- 2. All the numbers assigned to the horizontal rows and vertical columns are to be covered by a tape of such design so that once disturbed any other recovering is conspicuously noticeable. The tape must be of sufficient construction to prevent the concealed numbers from being viewed from the outside when using a high intensity lamp of up to five hundred watts.
- 3. The word "professional sports pool" is to be conspicuously headed at the top of the device. There must also be placed conspicuously on the sports-pool board the following information which must be completed by the organization unless the information has already been completed by the distributor:

COST PER PLAY	\$ _____
IDEAL CASH PRIZES	\$ _____
METHOD OF PRIZE PAYOUT	\$ _____

- 4. A sports pool must be conducted for a "professional" sporting event only. A professional sporting event is one game. Each of the professional sports teams in the professional sporting event is designated along either the vertical columns or

horizontal rows of numbers by the organization operating the gaming device. However, if the professional sports teams are unknown when the sports-pool board is being sold in advance, the organization shall designate identifiable conferences, divisions, leagues, or games, such as the super bowl. Each square or line constitutes a chance to win in the sports pool and each must be offered directly to prospective purchasers. The two professional sports teams must be designated before the squares or lines are sold. The squares or lines must be sold at a price not to exceed five dollars per square or line and that price is to be inserted in the appropriate space on the device prior to selling those squares or lines. The purchaser of a square or line writes the purchaser's full 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 may advance the sports-pool board to another professional sporting event or, if possible, return a player's purchase price of a square or line to the player. The organization shall conspicuously post a notice on a site containing the organization's special policy for advancing an unsold board.

5. An organization may sell a master sports-pool board that applies to two or more professional sporting events of the same professional sport. The squares or lines must be sold at a price not to exceed five dollars per square or line.
6. The winner of a sports-pool board is determined, at the conclusion of each payout period and in accord 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 twelve-number and fifteen-number sports-pool board, by determining the line which is assigned the number of the round in which the professional boxing event was stopped or ended.
  - c. 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 which relate to the numbers (ones position) of each team's score.
7. A sports-pool board must have a game serial number and be acquired only from a licensed distributor.

8. 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.
9. No gaming employee or volunteer may modify or otherwise change the game serial number that was written on the state gaming stamp by the distributor.
10. 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 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.
11. An organization shall make a good faith effort to contact the winner for redemption of the sports-pool prize. If the prize remains unclaimed by the winner for thirty days following the date of the professional sporting event, the organization may retain the prize.
12. 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-11-02. Register required for prizes.

1. A prize issued on a sports-pool board must be accounted for by a gaming employee or volunteer on either a register or directly on the sports-pool board at the time the cash prize is issued to a winner. If the prize is accounted for directly on a sports-pool board, the sports-pool board must be retained by the organization for three years from the end of the quarter in which the sports-pool activity occurred.
2. A gaming employee or volunteer shall legibly print, in ink, at least the following information:
  - a. Name of the gaming site.

- b. Gaming stamp number.
  - c. Game serial number.
  - d. Date of the professional sporting event.
  - e. Winning score.
  - f. Amount of the cash prize.
  - g. Full name, street address (if available) or rural route or post-office box number, city, state, and zip code of the winner. However, if a gaming employee or volunteer makes a record of the win for a cash prize, the gaming employee or volunteer does not need to include the winner's street address, city, state, or zip code on the prize register.
3. Total amount of cash prizes awarded.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-11-03. Record of the win. When any player wins a cash prize greater than one hundred dollars, a gaming employee or volunteer shall make a record of the win. However, the attorney general may require an 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 mechanically or electronically sequentially numbered receipt. The check or receipt must include at least the following information:

1. The gaming employee or volunteer 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 (sports-pool board).
  - e. Date of the sporting event.
  - f. Amount of the cash prize.
  - g. Date of the cash prize payout.



- h. Full name, street address (if available) or rural route or post-office box number, city, state, and zip code of the payee.
  - i. Unless an 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 gaming employee volunteer directly from the payee's pictured driver's license. If the payee does not have a pictured driver's license, the gaming employee or volunteer 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 gaming employee or volunteer 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 gaming employee or volunteer may not pay out any prize unless and until the payee has fully and accurately furnished to the gaming employee or volunteer 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 gaming employee or volunteer shall mail the cash prize to the payee.
  - j. Legible signature of the gaming employee or volunteer who completed the record of the win.
2. After a record of the win is completed by the gaming employee or volunteer, the payee shall legibly sign and date, in ink, the record of the win to acknowledge the cash prize amount.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-11-04. 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 99-01-11-03 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 99-01-11-03. 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 gaming employee or volunteer determines that a player has falsified, attempted to falsify, or conspired with another person to falsify the record of the win, a gaming employee or volunteer shall deny the player the cash prize and notify the attorney general or a local law enforcement agency.
3. An 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

**99-01-11-05. Reconciliation of inventory control records.**

1. An organization shall, on at least a quarterly basis, reconcile (compare) its inventory control records (see subdivision f of subsection 2 of section 99-01-11-06) of sports-pool boards that are recorded as being in play and in inventory to sports-pool boards that are actually in play and in inventory. A gaming employee or volunteer shall physically count the actual sports-pool boards in inventory, compare this count to the inventory control records, and resolve any difference. The physical count must be performed by a person other than the person who is primarily responsible for safeguarding the physical inventory of the sports-pool boards.
2. A gaming employee or volunteer 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-11-06. Recordkeeping system required.

1. Except as provided by subdivision a of subsection 2, a licensed organization shall retain daily accounting records with regard to professional sports-pool boards for three years from the end of the quarter in which the 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. Except as provided by subsection 1 of section 99-01-11-02, the sports-pool board must be retained by the organization for one year from the end of the quarter in which the 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. 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. Each person of the two-person verification team shall independently count the cash on hand in the immediate presence of the other person. When both persons agree with the count of the cash, each person shall legibly sign at least the person's last name and date that verification.
  - c. Records documenting the type of professional sport, designation of when prizes are paid (for example, game, half, period, quarter, inning), and amount of each prize.
  - d. A summary of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit. The summaries of all sports-pool boards conducted during a quarter must reconcile to the sports-pool activity reported on the North Dakota gaming tax return.
  - e. Record of the win as required by section 99-01-11-03.
  - f. 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 sports-pool board by gaming stamp number and game serial number. Unless an organization has only one site which is the location of the organization's home office, the 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 with at least the person's last name 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-11-07. 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. Also, in regard to a master sports-pool board, the gross proceeds received must be deposited in the organization's general gaming bank account no later than the fifth banking day following the day the organization receives the gross proceeds from the sports-pool board seller. 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 99-01-08-17 (bingo), 99-01-09-13 (raffles), 99-01-10-14 (charitable gaming tickets and punchboards), 99-01-12-30 (twenty-one), 99-01-13-24 (poker), 99-01-14-06 (calcuttas), 99-01-15-28 (paddlewheels), and 99-01-16-21 (electronic-mechanical charitable gaming ticket dispensing devices). 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 April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-17

CHAPTER 99-01-12  
 TWENTY-ONE

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99-01-12-01. 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. Cards two through ten are counted at their face value.
2. The rules in sections 99-01-12-02 through 99-01-12-30, either complementing or in addition to those enumerated by law, must be followed in the conduct and play of twenty-one.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-12-02. 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. A 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-03. Twenty-one drop box - Physical characteristics. Unless exempted by section 99-01-20-16, a 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. A drop box must meet the specifications of section 99-01-20-16 and have:

1. Unless only one 21-table is used at a site, a number either attached, permanently imprinted, or adhesively backed and impressed thereon, and which corresponds to the twenty-one table number.
2. After play has commenced, a money plunger, which must remain in the drop box slot 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-04. Twenty-one cards - Physical characteristics.

1. The cards used must be four, six, or eight complete decks of fifty-two cards each, shuffled together and used as one 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 a twenty-one table must be of one predominate color on all decks, or one-half of the number of decks used must be of one predominate color and the other one-half of the number of decks used must be of another different predominate color.
3. The design on the backs of each card in the 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. Jumbo-faced playing cards must be used.
6. No organization may use cards that are taped, defaced, bent, crimped, cut, shaved, or deformed in any other manner.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-05. Twenty-one dealing shoe - Physical characteristics.

1. A dealing shoe must have a face plate, a white or transparent base plate, and transparent or opaque 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.
2. A 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. An organization shall exercise appropriate key control to the safe storage place to restrict access to only authorized gaming employees and volunteers.
3. A 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-06. 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. All chips which do not have the name of the organization on at least one side and the specific value of the chip on the same side or on the opposite side must be retired effective July 1, 1992. However, if an organization's total gross proceeds for the previous fiscal year, for which gaming tax returns were filed, was twenty-five thousand dollars or less, and the organization purchased chips prior to November 1, 1986, which do not meet the requirements of this subsection, the chips do not need to be retired.

2. Twenty-one chips may be issued by an organization in denominations of fifty cents, one dollar, 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. 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:

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

- (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:

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

- (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:

	Upper limit	Lower limit
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 when the chips are viewed both in daylight and under incandescent light. In conjunction with the primary color, each organization shall utilize one or more 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 those chips.
4. No organization may use two or more different twenty-one chips of the same denomination of chip at a gaming site.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-12-07. 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. If an organization accepts five dollar wagers, a five dollar twenty-one chip prescribed by subsection 3 of section 99-01-12-06 must be available to players for the players' optional use.
2. The attorney general's prescribed 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-12-08. Requirement for safeguarding twenty-one chips and playing cards.

1. A gaming employee or volunteer shall safeguard twenty-one chips by securing the chips in a safe storage place or, if the twenty-one table has been open and no dealer is stationed at that table, securing the chip tray with a locking chip tray cover.
2. A gaming employee or volunteer shall safeguard twenty-one playing cards by securing the cards in a safe storage area or, if the twenty-one table has been opened and no dealer is

stationed at that table, cover or remove the cards from the table.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-09. Wagers and tips to be made with twenty-one chips only. Except as provided by section 99-01-12-10, 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-10, 53-06.1-17

99-01-12-10. Person not to bring personal cards or twenty-one chips. No person may bring onto a gaming site, nor introduce into any twenty-one game, any personal playing cards, nor any twenty-one chip 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, that organization may redeem the chip for the chip's actual value by presenting the chip to the organization that issued the chip. The organization that issued the chip shall redeem the chip.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-11. 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 21-table. No organization may transfer or make change of twenty-one chips directly from one 21-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 mechanically or electronically 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. Reference to "twenty-one".
  - b. Date and time.
  - c. Denomination of twenty-one chips.
  - d. Quantity and total dollar value, by denomination, of twenty-one chips.
  - e. Grand total dollar value of the twenty-one chips.
  - f. Table number, if required by section 99-01-12-02.
  - g. Legible signature of a chip bank cashier. However, if the dealer is the only gaming employee or volunteer on duty, the dealer shall legibly sign in place of the chip bank cashier.
5. After preparation of the fill slip, the original copy of the 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 an 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 by the dealer assigned to the twenty-one table to which the twenty-one chips are to be received.

8. Unless exempted by subsection 7 of section 99-01-12-16, the duplicate copy of the fill slip must be deposited in the twenty-one drop box by the dealer.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-12. 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 mechanically or electronically 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 99-01-12-16, a credit slip must be prepared by a dealer, 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. Reference to "Twenty-one".
  - b. Date and time.
  - c. Denomination of twenty-one chips.
  - d. Quantity and total dollar value, by denomination, of twenty-one chips.
  - e. Grand total dollar value of the twenty-one chips.
  - f. Table number, if required by section 99-01-12-02.
  - g. Legible signature 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 9 of section 99-01-12-16, the original copy of the credit slip must be deposited by the dealer in the twenty-one drop box.
6. If an 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 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

#### 99-01-12-13. Chip bank services.

1. The value at which 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 10 of section 99-01-12-16, an organization shall sell twenty-one chips at the twenty-one table.
3. Twenty-one chips must be sold for cash only, and no credit of any nature may be extended by a gaming employee or volunteer to a person purchasing chips. No checks may be accepted for purchase of chips at a twenty-one table.
4. Cash taken in on twenty-one chips sold at a twenty-one table and through a cash register (see section 99-01-12-16) must be kept completely separate and apart from all other cash received by the organization until after the cash has been counted. Except for a two-person audit team, no gaming employee or volunteer may 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. An organization shall redeem its chips for cash at the value for which they were sold, except when the chips were obtained or being used unlawfully. The redeemed chips must be kept completely separate and apart from the chip bank until after the organization completes the daily activity records. A 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. A gaming employee or volunteer shall redeem a dealer's tips (chips) through a 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 rule does not preclude pooling of tips.
7. No gaming employee or volunteer may take any chips, including tips, to a dressing room, restroom, lounge, or any other location outside the physical area of the gaming site where games of chance are conducted. The dealer shall redeem the tips prior to leaving the gaming site.
8. If an organization discontinues twenty-one at a gaming site, the organization shall redeem its own chips for cash, at the organization's home office or at the organization's active gaming site, if applicable, for at least thirty days following the discontinuance of twenty-one at that gaming site.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

#### 99-01-12-14. Opening of a twenty-one table for gaming.

1. Prior to twenty-one playing cards being used at a twenty-one table at the initial opening of the table, a 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 a 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 be shuffled so that they are randomly intermixed.
5. If the playing cards are removed from the view of the public for any reason, a dealer shall apply subsections 2, 3, and 4 when the cards are brought back to the table for use.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-15. Procedure for accepting cash at a twenty-one table. A dealer who receives currency from a player at a twenty-one table for exchange for twenty-one chips shall:

1. Spread the currency on top of the twenty-one table in full view of the player who presented the currency and in full view of any gaming person who serves in a supervisory position or pit boss assigned to the table.
2. Verbalize the amount of currency in a tone of voice loud enough to be heard by the player who presented the currency and all the other players at the table.
3. Immediately after an equivalent dollar amount of twenty-one chips has been given to the player, take the currency from atop the twenty-one table and place the currency in the drop box attached to the table.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-16. Use of a cash register may be authorized in lieu of a twenty-one drop box. An 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. A 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. A 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. A cash register used must retain its transaction count between uses whether or not its power source is interrupted.
  3. A 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.
  8. A credit slip must be prepared by a gaming employee or volunteer, 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. An 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.
  11. An 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 99-01-12-13.

12. An organization is not required to determine the win and loss results for each table.
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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-12-17. Number of players.

1. There may be 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. 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-12-18. Betting limits.

1. An 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 a gaming site. No organization may set a minimum wager for a table.
2. An 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. An organization shall provide a 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 approximates the actual time period of dealing out a whole dealing shoe.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

#### 99-01-12-19. 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 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 submits 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. A 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. However, if the designated player or any other player refuses to cut the cards, the dealer or a pit boss shall cut the cards. The dealer shall rotate the opportunity to cut the cards among all the players.
4. After the cutting card has been inserted by the player or dealer, 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 an 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 shall begin a new shuffle and again repeat the procedure described by this section. No organization may

reshuffle the cards unless the indicator card makes its appearance at the face of the shoe.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-20. Betting.

1. An 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. A separate wager must equal the original wager, except a tip bet which may range from fifty cents up to the maximum wager the organization allows for the table, and insurance bets which must 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 which must equal the original wager.
3. Splitting is permitted as follows:
  - a. On any pair or any two 10-count value cards.
  - b. When splitting, a 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 shall take at least one card on each split hand.
  - c. The wager on each hand must equal the player's original wager.
  - 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. An organization may determine whether or not to permit insurance betting. That determination must be posted. Insurance betting is permitted as follows:
  - a. An insurance bet is placed when the dealer's faceup card is an ace.
  - b. An insurance bet must be half the player's original wager.
  - c. There may be no insurance bet on a tip wager.
  - d. The payoff on a winning insurance bet is two to one.
6. An 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. A tip bet is made by a player when the player makes the original wager.
  - b. Each betting space is limited to one tip bet regardless of splitting.
  - c. A tip bet does not have to equal the player's original wager. The tip bet may range from fifty cents up to the maximum wager the organization allows for the table.
  - d. A 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, a tip bet is assigned to the specific split hand located at the foremost left of the player, from the dealer's perspective.
  - g. A payoff on a tip bet is one-to-one regardless if the player has a natural twenty-one.
  - h. If a player's hand wins, a tip bet is paid off at an equal amount and the tip bet and the payoff 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

#### 99-01-12-21. The deal.

1. All cards must be dealt from a dealing shoe specifically designed for that purpose and located on the table to the immediate left of the dealer, from the dealer's perspective.
2. After all the playing cards have been shuffled and placed in the dealing shoe, a 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.
3. Either of the following methods must be consistently used for the deal of twenty-one at a twenty-one table:
  - a. Hole-card-no-peek method of dealing. A dealer may not look at the face of the dealer's hole card until after all other cards requested by the players, pursuant to 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. A dealer may not deal a second card (hole card) to the dealer until after all other cards requested by the players, pursuant to 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 99-01-12-22.
4. At the commencement of each round of play, a 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 place them on the appropriate area of the playing surface with the dealer's right hand; however, the dealer may deal cards to the first two betting spaces with the dealer's left hand. A player's second card and any hit card 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 rule 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. Throughout the deal, no dealer may allow any player to touch any cards on the twenty-one table.
6. If a twenty-one table is temporarily inactive, a dealer shall burn one card or reshuffle when a new player comes to the table.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-22. The play.

1. After the first two cards have been dealt to each betting space in which a wager is contained, and a dealer's faceup card is an ace, the dealer shall ask the players if they desire to make an insurance bet. If a player does desire to make an insurance bet, the player shall place a chip on the "insurance" line on the playing surface. The dealer 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 shall announce "insurance bets are closed". However, this rule is not applicable to an organization that does not permit insurance betting.
2. A dealer shall announce, beginning from the dealer's left, the point total of each player's hand. As each player's hand point total is announced, the player shall indicate whether the player desires to split or double-down, or both, by properly placing a chip as follows:
  - 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. 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. If a dealer is unsure of a player's intent to either split or double-down due to an improper chip placement by the player, the dealer shall ask the player whether the player desires to split or double-down. Based on the player's response, the dealer shall properly reposition the chip.
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 must be dealt to each of the two split hands. 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. 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. A 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. A 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 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 5 of section 99-01-12-21) whatever additional cards are necessary to effectuate that decision consistent with this chapter and shall announce the new point total of the player's hand after each additional card is dealt. Each player at the twenty-one table 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 that announcement.
7. If a player did not split, did not double-down, 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 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 a 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 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 a 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 shall immediately collect the tip bet chips and place the chips in the chip tray.

10. If a 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.
11. If a 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.
12. If the decisions of each player have been implemented, all additional hit cards have been dealt, the player's chips and cards of certain busted hands properly positioned according to subsection 9, and the provisions of subsection 10 or 11 do not apply, a dealer shall 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 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 shall immediately collect all of the players' insurance bet chips and place the chips in the chip tray. Then the dealer 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 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 99-01-12-20, the player wins the insurance wager

at the rate of two to one. However, if the player's original hand also is a natural twenty-one, subdivision d also applies.

- 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 shall return the players' separately wagered chips to the players.
  - f. If the count of the dealer's hand is sixteen or under, the dealer shall draw a hit card until such time as the count exceeds sixteen. 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.
  - g. If the count of the dealer's hand exceeds sixteen but does not exceed twenty-one, the dealer 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 shall then stay.
  - h. If the dealer's hand busts, the remaining players with active hands win their wagers.
13. If a player's original hand is a natural twenty-one (blackjack) and a 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.



14. 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. No player may win merely based on a certain number of hit cards the player has drawn without busting.
15. If a dealer makes a mistake, the mistake must be corrected in accord with section 99-01-12-23. No dealer may pay off any hand based merely on a dealer mistake.
16. If a player's hand loses against the dealer's hand, the organization wins the tip bet. The dealer 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.
17. If a 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.
18. If a player's hand wins against the dealer's hand, the dealer shall make the chip payoff of the player's winning wager as follows:
  - a. Normal hand payoff. The chip must be placed beside the original wager in the betting space. The chip may not be placed on top of the original wager.
  - b. Split hand payoff. The chip must be placed beside the wager in the betting space. The chip may not be placed on top of the wager.
  - c. Double-down hand payoff. The chips must be placed beside the two wagered chips in the betting space. The chips may not be placed on top of the wager.
  - d. Insurance bet payoff. The chip must be first placed beside the insurance bet, then placed on top of the insurance bet and the chips pushed in front of the player.
  - e. Tip bet payoff. The chip 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 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.
19. 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 played back to indicate each player's hand in case of question or dispute. The dealer 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 shall pick up the dealer's cards against the top of the players' cards and place them in the discard holder face downwards.
20. Throughout the play, no dealer may allow any player to touch any card on the twenty-one table.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-12-23. Dealing mistakes. Unless an 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 a 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 a 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 a 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 a dealer inadvertently drops a player's card or a dealer's 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 99-01-12-19, the first card must be drawn face downwards and burned, and the dealer shall complete the round of play.
10. If a 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.
13. If a player inadvertently wagers only fifty cents and is dealt a card, a dealer shall return the fifty cents to the player and burn the card.
14. If a dealer inadvertently does not burn a card at the beginning of dealing a shoe, the dealer shall burn the card after the first complete round of play is concluded.

15. If a dealer's facedown card is unintentionally exposed to any player, such as when the dealer inadvertently drops the card off the table, the dealer shall burn the card.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-24. 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 the rules.

HOUSE MUST

Use 4, 6, or 8 complete decks of 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 betting spaces maximum  
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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-07, 53-06.1-10, 53-06.1-17

99-01-12-25. Twenty-one drop box - Transportation from the twenty-one table and storage.

1. Unless the drop box cash is counted immediately when a drop box is removed from the twenty-one table, the drop box removed must be transported by the person in charge and escorted by a gaming employee or volunteer directly to and secured in a safe storage place. However, this rule does not apply if there is only one gaming employee scheduled on duty.
2. A drop box, when not in use during a shift, may be stored on a twenty-one table provided that there is adequate security. If adequate security is not provided, 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 an authorized gaming employee or volunteer.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

**99-01-12-26. Drop box cash count by a two-person count team.**

1. A drop box must be opened by at least a two-person count team. The two-person count team must consist of at least one person who is an authorized agent of the organization's bookkeeper and a second person who is a gaming employee or volunteer. The bookkeeper may be the authorized agent. The authorized agent of the bookkeeper may not be a gaming employee or volunteer. The count team may not be comprised of two persons who have a supervisor/subordinate relationship. One count team member may not be a common household member, spouse, child, parent, brother, or sister of the second count team member.
2. The key utilized to unlock the drop box from the twenty-one table must be maintained and controlled by the person in charge and provided to the gaming employee or volunteer who is participating in the drop box cash count. The key to one lock securing the contents of the drop box must be maintained and controlled by the authorized agent of the organization's bookkeeper. If there are two separate locks which secure the contents of the drop box, the key to the second lock must be maintained and controlled by a gaming employee or volunteer.
3. Each person of the two-person count team shall independently count the drop box cash in the immediate presence of the other person and resolve any difference between the two counts. When both members agree with the drop box cash count, one member shall record the count, and both members shall legibly sign and date, in ink, the twenty-one drop box cash count report. The count team shall prepare a two-part bank deposit record. The authorized agent of the organization's bookkeeper shall forward the drop box cash count report and one part of

the bank deposit record directly to the bookkeeper. The gaming employee or volunteer shall carry the bank deposit (cash) and the second part of the bank deposit record directly to a financial institution. Then, the gaming employee or volunteer shall forward the validated bank deposit slip or receipt directly to the bookkeeper. This rule must be applied unless written approval is obtained from the attorney general to use an alternate bank deposit procedure which meets this rule's internal control objective.

4. This section does not apply to a gaming site that has only one gaming employee or volunteer continually scheduled on duty while games of chance are conducted at the site on that day 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-27. Tournaments. In addition to the provisions of this chapter, an organizations shall comply with at least the requirements of this section in the conduct of a twenty-one tournament and 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 99-01-12 apply to the tournament.
2. A player shall register with the organization before participating.
3. An organization may charge a player an entry fee.
4. An organization shall set a minimum player buy-in amount.
5. An organization may assign each player the player's betting space and may limit each player to one betting space.
6. A player may not move from table to table or temporarily or permanently stop playing unless permission is granted by the organization.
7. A player may not transfer the player's chips to or from another player.
8. A player shall play with only the chips issued by the organization for tournament play.

9. A player shall keep the player's chips on top of the twenty-one table in view of the dealer.
10. 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.
11. 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.
12. An organization shall post all the players' scores at the conclusion of either each day's activity or the tournament.
13. The player with the highest score based either on preliminary rounds or a championship round is the champion.
14. An organization's decision regarding any disputes is final.
15. Cash or merchandise prizes can be awarded.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-28. 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 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-29. Recordkeeping system required.

1. A licensed organization shall retain daily accounting records with regard to twenty-one for three years from the end of the quarter in which the 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. A 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. 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. Each person of the two-person verification team shall independently count the cash bank and chip bank in the immediate presence of the other person. When both persons agree with the count of the cash bank and chip bank, each person shall legibly sign at least the person's last name and date that verification.
  - b. Records 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, and, unless exempted by subsection 12 of section 99-01-12-16, win and loss results for each table.
  - c. A summary of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit. The summaries of all twenty-one activity conducted during a quarter must reconcile to the twenty-one activity reported on the North Dakota gaming tax return.
3. All daily activity records must be completed by use of a nonerasable ink pen, and be legibly signed with at least the person's last name 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 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 withdrawn from the home office chip inventory, and the dates the chips are added to and withdrawn from the site chip inventory, by denomination of twenty-one chip. The organization shall, on at least a quarterly basis, reconcile (compare) its inventory of twenty-one chips that are recorded as being at the home office and site to the twenty-one chips that are actually in inventory at the home office and site. The organization shall physically count the actual twenty-one chips in inventory at the home office and site, compare this count to the inventory control log, resolve any difference, and document the reconciliation in writing. The physical count must be performed by a person other than the person who is primarily responsible for safeguarding the

physical inventory of chips. The organization may use the same master and site inventory control logs for twenty-one and paddlewheel chips.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-12-30. 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 99-01-08-17 (bingo), 99-01-09-13 (raffles), 99-01-10-14 (charitable gaming tickets and punchboards), 99-01-11-07 (professional sports pools), 99-01-13-24 (poker), 99-01-14-06 (calcuttas), 99-01-15-28 (paddlewheels), and 99-01-16-21 (electronic-mechanical charitable gaming ticket dispensing devices). 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

#### CHAPTER 99-01-13 POKER

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99-01-13-01. 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 99-01-13-04. 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 April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-07, 53-06.1-17

99-01-13-02. Limitations and fees.

1. An organization must first be separately licensed as a class A or class B organization.

2. An organization shall conduct the game of poker on not more than two occasions per year after receiving a class E license (see subsection 2 of section 99-01-04-01).
3. For tournament play, an organization shall:
  - a. Provide the dealer.
  - b. Use denomination chips.
  - c. Follow the administrative rules applied to tournament play.
4. For nontournament play, an organization:
  - a. Is not restricted to those types of poker games authorized by section 99-01-13-03. The organization may play any variation of poker.
  - b. When providing a dealer, shall follow the administrative rules applied to tournament play.
  - c. When not providing a dealer, shall:
    - (1) Have players use cash for betting purposes.
    - (2) Ensure that players are complying with all applicable provisions of this article and North Dakota Century Code chapter 53-06.1.
5. For tournament and nontournament play, an organization shall:
  - a. Charge each player a fee not to exceed two dollars per one-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 charge each player a fixed entry fee not to exceed one hundred dollars in lieu of or in addition to the fee assessable at one-half hour intervals. 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. The fee collected at the one-half hour interval must be immediately recorded by a gaming employee or volunteer.
6. An 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. An 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 an organization's option.
9. An organization may set minimum table limits.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-13-03. Types of poker games authorized - Tournaments only. An organization may conduct only the following types of poker games in a tournament:

1. Texas hold'em.
2. Five-card low draw poker.
3. Five-card high draw poker.
4. Five-card high-low split draw poker.
5. Five-card stud poker.
6. Seven-card low stud poker.
7. Seven-card high stud poker.
8. Seven-card high-low split stud poker.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-13-04. Ranking of cards and hands.

1. The cards are ranked ace, king, queen, jack, ten, nine, eight, seven, six, five, four, three, deuce. The ace is the highest ranked card in high poker and is ranked lower than a deuce in low poker.
2. A poker hand at showdown consists of only five cards, usually the best five selected from a greater number, ranked according to the following from highest to lowest:
  - a. Five aces - four aces of different suits and the joker.

- b. Straight flush - five cards of the same suit in sequence. An ace high straight flush is a "royal flush".
  - c. Four of a kind - four cards of the same rank.
  - d. Full house - three cards of the same rank and two cards of the same rank.
  - e. Flush - five cards of the same suit.
  - f. Straight - five cards in sequence.
  - g. Three of a kind - three cards of the same rank.
  - h. Two pair - two cards of the same rank and two other cards of the same rank.
  - i. One pair - two cards of the same rank.
  - j. Highest card - the highest ranking card in the hand of five odd cards.
3. A joker card may be used in draw poker either as an ace, or as any card not already in the player's hand to complete a straight flush, flush, or straight. The joker card may be used in low poker as a card of the lowest rank not already in the player's hand.
4. If two or more hands are tied in the ranking, the hand with the highest ranked card or cards (for example - three of a kind in a full house) wins. Otherwise, the tie must be broken by the rank of the unmatched cards in the hand. All suits are of equal value for determining hand rankings.

History: Effective April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-17

99-01-13-05. Poker cards - Physical characteristics.

- 1. The cards used must be one complete standard deck of fifty-two cards. However, a joker may be used in particular types of poker games.
- 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-13-06. Poker chips - Value and physical characteristics.

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 on the other side of the chip have the organization's name represented by a design, symbol, abbreviation, or other identification which would differentiate the organization's chips from those being used by every other organization.
2. Denomination poker chips must be issued by an organization in denominations of only five cents, ten cents, twenty-five cents, fifty cents, one dollar, and two dollars.
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 those chips.
5. An organization may use twenty-one chips of denominations of fifty cents, one dollar, and two dollars.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-10, 53-06.1-17

99-01-13-07. Wagers to be made with poker chips only - Tournaments only. A wager must be made with poker chips furnished by an 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-10, 53-06.1-17



99-01-13-08. Persons not to bring their own cards or poker chips. No person may bring onto a gaming site, or introduce into any poker game, any playing card or any poker chip for use in wagering other than those obtained from the organization.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-13-09. Chip bank services.

1. The value at which the five colors of poker chips are sold and redeemed must be conspicuously posted and visible to each person prior to that person purchasing chips. However, if an organization does not use all five denominations in play, only those denominations actually used must be posted.
2. Poker 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 poker table.
3. Cash taken in on poker chips sold must be kept completely separate and apart from all other cash received by an organization until such time as it is counted.
4. An organization shall redeem its own chips for cash at the value for which they were sold. The cash bank used by an organization to redeem its own chips must be kept completely separate and apart from all other cash of an organization.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-10, 53-06.1-17

99-01-13-10. Procedure for accepting cash. A cash bank cashier who receives currency from a player for exchange for poker chips shall:

1. Spread the currency on top of the cash bank cashier's counter in full view of the player who presented it.
2. Verbalize the amount of currency in a tone of voice loud enough to be heard by the player who presented the currency and all the other players at the table.
3. Immediately after an equivalent dollar amount of poker chips has been given to the player, take the currency from atop the counter and place the currency in a secure container.

History: Effective April 1, 1992.

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

99-01-13-11. 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-10, 53-06.1-17

99-01-13-12. Use of device prohibited. No player may use any device to assist in keeping track of cards played.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-13-13. Special policies. An organization may establish rules of conduct for players and spectators on its licensed site.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-13-14. Organization dealer restriction. No dealer provided by an organization may have a financial interest, directly or indirectly, in the outcome of the game dealt and may not otherwise participate or play in the game.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-13-15. Restrictions of players - Tournaments only.

1. No player in a poker game may play another player's hand. A player shall only play one hand and the player shall make all decisions without advice from any person. No player with a live hand may communicate with another player or spectator.
2. No player may provide any information to any person regarding the player's live or folded hand.

3. No player may allow a person to sit in on a poker game on the player's behalf. An organization may prohibit the player from further play for this violation.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-13-16. Shuffle and cut of the cards.

1. Immediately prior to commencement of play of each game, a 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 an organization provides a 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 must never be dealt.
3. A dealer, at least once per hour, shall count the cards in the deck to verify that the deck is complete.
4. A dealer, at least once every two hours, shall change the deck of cards.
5. An 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, an organization shall replace the used decks with a new set of two separate decks of cards.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-13-17. Ante.

1. If there is an ante, the ante must either be five cents, ten cents, twenty-five cents, fifty cents, or one dollar.
2. A 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, a 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-10, 53-06.1-17

99-01-13-18. The deal.

1. All cards used must be dealt out of the hand by a dealer.
2. If an organization provides a dealer, a dealer-button must be moved around the table clockwise player to player so that the player who has the dealer-button receives the advantages of playing and betting last.
3. If an 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-07.2, 53-06.1-17

99-01-13-19. The play - Tournaments only.

1. Texas hold'em must be played according to the following rules:
  - a. A dealer shall burn a card after every round of betting.
  - b. A 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 dealer-button. The last player to get the player's card is the player assigned the 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-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. A 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 dealer-button is the first player to bet. After the bet has been opened, any player may call, raise, or fold.
  - e. A dealer then burns a card. Then, the dealer deals the fourth community card from the deck and turns it faceup (flop) in the center of the table.
  - 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. A 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. 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. A 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. Stud poker must be played according to the following rules:
- a. Five-card stud poker. Each player receives one card facedown and one card faceup to form his initial hand. The player then receives 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. Each 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-13-20. 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. An organization shall set a minimum player buy-in amount. If a player leaves the game, the player shall cash out the player's chips. If a player cashed out and returns to the game within a specified time period, the player is still considered part of the same playing session and may buy in for the amount the player cashed out. Otherwise, the player is terminated from the tournament.
3. The table stakes rules 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 an 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 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 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, 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 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.

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 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 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 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. 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 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 a dealer with the player's approval is dead.
  - i. If a 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 a dealer runs out of cards in the games of seven-card low stud poker, seven-card high stud poker, or 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, a player who thinks the player has a possible contending hand 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. An 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-13-21. 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 players at a poker table can readily read those rules.

HOUSE MUST

Use one deck of cards (fifty-two cards, except when a 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"

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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-13-22. Poker tournament restrictions.

1. A licensed organization may conduct a poker tournament, charge the participating players a fixed entry fee not to exceed one hundred dollars, and award prizes.
2. An 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. An organization shall maintain a record of all the fees collected and the number of players for each tournament conducted.
4. An 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-13-23. Recordkeeping system required.

1. An organization shall retain daily accounting records with regard to poker for three years from the end of the quarter in which the 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. A recordkeeping system must include at least the following records for each occasion of poker gaming activity:
  - a. Records documenting the 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. Each person of the two-person verification team shall independently count the cash on hand in the immediate presence of the other person. When both persons agree with the count of the cash, each person shall legibly sign at least the person's last name and date that verification.

- b. 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; however, this rule does not apply if an organization only charges a player a fixed entry fee for tournament play.
  - c. Name, signature, and hours worked of the gaming employee or volunteer who was responsible for the collection of the fee.
  - d. A summary of gross proceeds/adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit. The summaries of all poker activity conducted during a quarter must reconcile to the poker activity reported on the North Dakota gaming tax return.
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 with at least the person's last name and dated by the person completing the record.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-13-24. 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 99-01-08-17 (bingo), 99-01-09-13 (raffles), 99-01-10-14 (charitable gaming tickets and punchboards), 99-01-11-07 (professional



sports pools), 99-01-12-30 (twenty-one), 99-01-14-06 (calcuttas), 99-01-15-28 (paddlewheels), and 99-01-16-21 (electronic-mechanical charitable gaming ticket dispensing devices). 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

#### CHAPTER 99-01-14 CALCUTTAS

Section	
99-01-14-01	Calcutta
99-01-14-02	Record of the Win
99-01-14-03	Person Prohibited From Falsifying Record of the Win
99-01-14-04	Reconciliation of Inventory Control Records
99-01-14-05	Recordkeeping System Required
99-01-14-06	Actual Cash Profit Bank Deposit Required by Licensed Organizations

99-01-14-01. 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 the performance of 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. No merchandise prize may be awarded.

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 18, 28, and 30.

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 a gaming employee or volunteer:

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. A calcutta board must have a serial number and be acquired only from a licensed distributor.
6. No gaming employee or volunteer may modify or otherwise change the serial number that was written on the state gaming stamp by the distributor.
7. An 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. The total cash prize payout may not exceed ninety percent of the actual gross proceeds of the calcutta auction pool.
9. An 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. An organization may charge a player (bidder) an entry fee which is classified as other income on the North Dakota gaming tax return.
14. 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 (see subsection 15) purchases that competitor.
15. An open bid enables a potential player (bidder), during a designated time period, to write the player's (bidder's) name

and bid for a competitor on a disclosed register assigned to that competitor. Each successive potential player (bidder) interested in that competitor shall write the player's (bidder's) name and bid, of an amount higher than the previous potential player's (bidder's) bid, on the register. When the designated time period ends, the last potential player (bidder) listed on the register who offered the highest bid for the particular competitor purchases that competitor.

16. If a competitor was purchased by a player (bidder) and the competitor does not participate in the sporting event for any reason, the organization shall refund the bid amount to the player (bidder) who purchased that competitor.
17. Prior to the auction, a gaming employee or volunteer shall verbally announce and post the predetermined percentage of the calcutta auction pool that will be distributed as the cash prize 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.
18. Prior to the auction, a gaming employee or volunteer shall complete at least the following information 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.
19. 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.
20. There is no limit to the amount a player (bidder) may wager upon a competitor.
21. No competitor may be auctioned off to more than one player (bidder).
22. No player may be under the age of twenty-one.
23. A player (bidder) may purchase more than one competitor.
24. An 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 site authorization by a local governing body and a license by the attorney general for that site.

25. 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.
26. If a competitor is not purchased by a player (bidder) through an auction, an organization may choose either or both of the following options to sell the competitor:
  - a. 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.
  - b. Allow a competitor to purchase oneself for a predetermined minimum wager. The predetermined wager is in addition to any entry fee assessed to the competitor.
27. A gaming employee or volunteer 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. 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.
28. After the auction, a gaming employee or volunteer 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. Amount wagered by the player (bidder) on the player's competitor. The winning player (bidder) is the player (bidder) who "purchased" or wagered upon the highest performance ranking competitor who was actually purchased through the calcutta auction.
  - c. Cumulative amount, in sequence of the line numbers, wagered by the players (bidders) on the competitors.
29. 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 27.
  30. After the conclusion of the sporting event, a gaming employee or volunteer shall complete for each line on the calcutta board the amount of the auction pool won by each player (bidder).
  31. An organization may award the cash to the winning player (bidder) at the location where the professional or amateur sporting event is held.
  32. 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.
  33. 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.3, 53-06.1-17

99-01-14-02. Record of the win. When any player (bidder) wins a cash prize greater than one hundred dollars, the gaming employee or volunteer shall make a record of the win. However, the attorney general may require an 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 mechanically or electronically sequentially numbered receipt. The check or receipt must include at least the following information:

1. A gaming employee or volunteer 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 gaming employee or volunteer directly from the payee's pictured driver's license. If the payee does not have a pictured driver's license, the gaming employee or volunteer 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 gaming employee or volunteer 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 gaming employee or volunteer 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 gaming employee or volunteer shall mail the cash prize to the payee.
  - i. Legible signature of the gaming employee or volunteer who completed the record of the win.
2. After a record of the win is completed by the gaming employee or volunteer, the payee shall legibly sign and date, in ink, the record of the win to acknowledge the cash prize amount.

**History:** Effective April 1, 1992.

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

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

99-01-14-03. 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 99-01-14-02 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 99-01-14-02. 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 a gaming employee or volunteer determines that a player has falsified, attempted to falsify, or conspired with another person to falsify the record of the win, the gaming employee or volunteer shall deny the player the cash prize and notify the attorney general or a local law enforcement agency.
3. An 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-14-04. Reconciliation of inventory control records.

1. An organization shall, on at least a quarterly basis, reconcile (compare) its inventory control records, (see subdivision e of subsection 2 of section 99-01-14-05) of calcutta boards that are recorded as being in play and in inventory to calcutta boards that are actually in play and in inventory. A gaming employee or volunteer shall physically count the actual calcutta boards in play and in inventory, compare this count to the inventory control records, and resolve any difference. The physical count must be performed by a person other than the person who is primarily responsible for safeguarding the physical inventory of the calcutta boards.



2. A gaming employee or volunteer 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-14-05. 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:
  - 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. Each person of the two-person verification team shall independently count the cash on hand in the immediate presence of the other person. When both persons agree with the count of the cash, each person shall legibly sign at least the person's last name and date that verification.
  - c. A summary of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit. The summaries of all calcuttas conducted during

a quarter must reconcile to the calcutta activity reported on the North Dakota gaming tax return.

- d. Record of the win as required by section 99-01-14-02.
  - 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 an organization has only one site which is the location of the organization's home office, the 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 with at least the person's last name 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-14-06. 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, include the respective state gaming stamp number, 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 99-01-08-17 (bingo), 99-01-09-13 (raffles), 99-01-10-14 (charitable gaming tickets and punchboards), 99-01-11-07 (professional sports pools), 99-01-12-30 (twenty-one), 99-01-13-24 (poker), 99-01-15-28 (paddlewheels), and 99-01-16-21 (electronic-mechanical charitable gaming ticket dispensing devices). 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 April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-17

#### CHAPTER 99-01-15 PADDLEWHEELS

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99-01-15-01. Paddlewheels. The game paddlewheels must be conducted and played according to either or both of the two variations described by subsections 1 and 2; however, an organization may conduct paddlewheels as a variation of subsection 2 as provided by section 99-01-20-18.

1. Paddlewheels may be a game in which a player purchases a preprinted paddlewheel ticket, detachable from a paddlewheel ticket card. The paddlewheel ticket must contain one or more numbers or symbols (includes letters) corresponding to the numbers or symbols on a paddlewheel. Prior to a spin of a paddlewheel which is marked off into equally spaced numbered or symbolized sections, the player purchases a preprinted paddlewheel ticket. The number or symbol on a ticket may not be duplicated on any other ticket of the same paddlewheel ticket card. The maximum price per ticket is two dollars. All the tickets of a paddlewheel ticket card must be sold prior to the spin of a paddlewheel. The organization may not have a direct interest in the outcome of the spin of the paddlewheel. After the spin of the paddlewheel by a wheel operator, a pointer stops the spinning paddlewheel and designates the winning number or symbol. The object of the game is for the player's paddlewheel ticket to contain the winning number or symbol. Cash or merchandise prizes may be awarded. No cash prize amount may be a variable multiple of the standard price of a paddlewheel ticket. Section 99-01-15-06 and sections 99-01-15-26 through 99-01-15-28 must be followed in the conduct and play of paddlewheels described by this subsection. This variation reflects a reclassification of the game rafflewheels.
2. Paddlewheels may be a table game in which a player purchases a paddlewheel or twenty-one playing chip with coin or currency. Prior to a spin of a paddlewheel which must have two to five differently colored concentric circles marked off into equally spaced sections, the player exchanges the playing chip for a preprinted paddlewheel ticket. The maximum price per ticket

is two dollars. The player places a wager by placing the player's paddlewheel ticket in a slot or other retaining device on a paddlewheel table that corresponds to a certain colored number or symbol or set of colored numbers or symbols (includes letters) on the paddlewheel the player is wagering on. After the spin of the paddlewheel by a wheel operator, a pointer stops the spinning paddlewheel and designates the winning colored number or symbol or set of colored numbers or symbols. The object of the game is for the player to wager on a certain colored number or symbol or set of colored numbers or symbols that win. A prize payoff to the player is a predetermined variable multiple of the amount wagered and must be in the form of playing chips. No merchandise prize may be awarded. A prize payoff to the player is based on the particular colored number or symbol or set of colored numbers or symbols the player wagered on. Except for section 99-01-15-06, the rules in sections 99-01-15-02 through 99-01-15-28 must be followed in the conduct and play of paddlewheels involving the use of a paddlewheel table as described by this section.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07, 53-06.1-07.4, 53-06.1-17

#### 99-01-15-02. Paddlewheel - Physical characteristics.

1. A paddlewheel is a mechanical vertical wheel. The paddlewheel must be round in shape, be at least thirty inches [76.2 centimeters] in diameter, and be divided into a minimum of two and a maximum of five concentric circles. The outer circle may contain up to sixty numbers or symbols. Each inner circle may contain up to one-half of the number of numbers or symbols as that circle's adjacent outer circle. The numbers of each circle must be sequential starting with the number "one" but may be placed randomly on that circle. Each circle must be divided into equally spaced sections corresponding to the number of numbers or symbols within the circle. Each circle must be a different primary color which must correspond to the colored numbers or symbols or sets of colored numbers or symbols of a paddlewheel table playing surface.
2. A paddlewheel may have specially designated "house numbers" or "house symbols" in regard to an optional "odd" or "even" bet.
3. A protruding peg or pin must be located, on the circumference of the paddlewheel, at least at the dividing line between each of the sections of the outside concentric circle.
4. The colored numbers or symbols of all concentric circles must be at least five-eighths of one inch [15.88 millimeters] in height.

5. A pointer, commonly referred to as a paddle, must be positioned above the paddlewheel. The pointer is used to stop the spin of the paddlewheel and to determine the winning colored number or a symbol or set of colored numbers or symbols.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.4, 53-06.1-17

#### 99-01-15-03. Paddlewheel table - Physical characteristics.

1. A paddlewheel table must accommodate placement of bets by players on the front and both sides. The colored numbers or symbols and any sets of colored numbers or symbols must be at least two inches [5.08 centimeters] in height. The table must have a rail for holding a player's paddlewheel chips.
2. A paddlewheel table playing surface must be permanently and clearly imprinted with colored numbers or symbols or sets of colored numbers or symbols corresponding to the colored numbers or symbols of each concentric circle. A set of colored numbers or symbols represents a line bet. The table may have a statement of "ODD" and "EVEN" for placing a bet that any number of a designated concentric circle will be odd or even.
3. A paddlewheel table must have a slot opening or other retaining device for each single colored number or symbol, set of colored numbers or symbols, and optional odd or even for placing a paddlewheel ticket.
4. Unless an organization posts prize payoff information in accord with subsection 2 of section 99-01-15-20, each colored number or symbol and each set of colored numbers or symbols (line bet), including an optional odd or even bet, of a paddlewheel table must state the respective prize payoff. The prize payoff must be either permanently and clearly imprinted or adhesively backed and impressed onto the table playing surface adjacent to each colored number or symbol and each set of colored numbers or symbols, including an optional odd or even bet. The prize payoff is the relationship of the value of paddlewheel or twenty-one chips to be paid out as a prize compared to a winning one dollar paddlewheel ticket. The prize payoff must be stated as "PAYS \_\_\_\_\_ to \_\_\_\_\_" with the word "to" being synonymous with ":" and "for". For example, for a certain colored number or symbol which pays off forty dollars for a winning one dollar paddlewheel ticket, that certain colored number's or symbol's prize payoff must state "PAYS 40 to 1".

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-07.4, 53-06.1-17

99-01-15-04. Paddlewheel drop box - Physical characteristics. A paddlewheel table 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 coin or currency received from players for the purchase of paddlewheel or twenty-one chips. A drop box must meet the specifications of section 99-01-20-16 and have:

1. Unless only one paddlewheel table is used at a site, a number either attached, permanently imprinted, or adhesively backed and impressed thereon, and which corresponds to a paddlewheel table number.
2. After play has commenced, a money plunger must remain in the drop box slot while the drop box is attached to the paddlewheel table except for when coin and currency and forms are inserted into the drop box.
3. One lock that secures the drop box to a paddlewheel 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-05. Paddlewheel chips - Value and physical characteristics.

1. An organization may issue paddlewheel chips in denominations of fifty cents, one dollar, two dollars, five dollars, twenty-five dollars, and one hundred 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 paddlewheels. Paddlewheel chips issued in denominations of fifty cents, one dollar, two dollars, and five dollars must meet the specifications of twenty-one chips prescribed by section 99-01-12-06 and be identical to the organization's twenty-one chips used at the gaming site.
2. Each twenty-five dollar and one hundred dollar paddlewheel 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.

3. Twenty-five dollar and one hundred dollar paddlewheel chips must meet the following specifications:

a. Each denomination of twenty-five dollar and one hundred dollar paddlewheel chips must have a different primary color from the other denominations of paddlewheel and twenty-one chips as follows:

(1) Twenty-five dollar chip - "green" which means that color classified as 2.5G 5/12 on the munsell system of color coding which must be reproduced to within the following tolerances:

	<u>Upper limit</u>	<u>Lower limit</u>
Hue:	H+ 3.75G 5/12	H- 1.25G 5/12
Value:	V+ 2.5G 5.5/12	V- 2.5G 4.5/12
Chroma:	C+ None	C- 2.5G 5/9

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

	<u>Upper limit</u>	<u>Lower limit</u>
Value:	V+ N2.3/	V- N1.5/
Chroma:	5R 2/0.5	5B 2/0.5
	5Y 2/0.5	5P 2/0.5
	5G 2/0.5	

b. The primary color of twenty-five dollar and one hundred dollar paddlewheel chips must fall within the upper and lower limits of subdivision a 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 of the twenty-five dollar and one hundred 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 paddlewheel chip, including twenty-one chips, identical to the primary color used by the organization on another denomination of chip, including twenty-one chips, that results in a reversed combination of primary and secondary colors between two or more chips. For example, no organization may select the color red as the secondary color for the twenty-five dollar green chip

while selecting green as the secondary color for the five dollar red chip.

- c. The edge spots of the twenty-five dollar and one hundred dollar paddlewheel chips must be:
  - (1) Twenty-five dollar chip. The chip must have eight solid edge spots and each edge spot must be about five-thirty seconds of one inch [4.06 millimeters] in width.
  - (2) One hundred dollar chip. The chip must have four triple split edge spots and each edge spot must be about one-half of one inch [12.7 millimeters] in width. Each of the three split portions of an edge spot and the two spaces between the three split portions must be about one-sixteenths of one inch [1.52 millimeters] in width. The three split portions of an edge spot must be the secondary color and the two middle spaces may either be the primary color or a third color.
- d. Each denomination of paddlewheel 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. A paddlewheel chip must be designed, manufactured, and constructed so as to prevent to the greatest extent possible the counterfeiting of those chips.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-06. Paddlewheels - Excluding the use of a paddlewheel table (Reclassification of the game rafflewheels). This section applies to the paddlewheels game variation described by subsection 1 of section 99-01-15-02.

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

2. An organization may not use paddlewheel tickets:
  - a. That do not have a state gaming stamp affixed to the flare of the series of paddlewheel ticket cards.
  - b. When the paddlewheel ticket card game serial number, written on the state gaming stamp, differs from the lowest numbered paddlewheel ticket card game serial number (see subsection 6 of section 99-01-20-23) in the series.
  - c. When the paddlewheel ticket card game serial number preprinted on the stub does not match the paddlewheel ticket game serial number preprinted on the card's paddlewheel tickets.
3. A gaming employee or volunteer may sell a paddlewheel ticket to a player for a price not exceeding two dollars. The gaming employee or volunteer may sell a maximum of ten tickets to a player for betting on each spin of a paddlewheel. The maximum betting limit of the player for each spin is twenty dollars (ten tickets multiplied by two dollars per ticket). All the paddlewheel tickets of a series of paddlewheel ticket cards must be sold for the same price. No gaming employee or volunteer may sell one or more paddlewheel tickets to a person at a discount (for example, three tickets for the price of two tickets).
4. Tickets for entry into a paddlewheel 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 pay for anything other than the ticket, in order to play. All the tickets must be sold on the site and on the day the paddlewheel game is conducted.
5. All the paddlewheel tickets on a paddlewheel ticket card must be sold prior to the spinning of the paddlewheel. If all the paddlewheel tickets cannot be sold, the gaming employee or volunteer shall refund the gross proceeds to the players in exchange for the unplayed paddlewheel tickets.
6. A winner of a paddlewheel ticket game must always be determined by a spin of the paddlewheel.
7. No organization may have a direct interest in the outcome of the spin of the paddlewheel.
8. An organization may have multiple spins of the paddlewheel to award multiple prizes for one paddlewheel ticket card.
9. A paddlewheel must make at least four revolutions before stopping at the winning number or symbol. If four revolutions

are not made, the spin is void and the paddlewheel must be spun again.

10. Cash or merchandise prizes, or both, can be awarded. No cash prize amount may be a variable multiple of the standard price of a paddlewheel ticket. No single cash prize or the current retail price of a merchandise prize for a winning paddlewheel ticket may exceed one hundred dollars.
11. A winner of a paddlewheel ticket game is not required to be present when the paddlewheel is spun in order to be eligible for the prize. However, the winner of a paddlewheel ticket game shall claim the winner's prize by redeeming the winning paddlewheel ticket by the conclusion of the organization's gaming activity for that day. Otherwise, the player forfeits the prize.
12. After a prize payoff, an organization shall record the date, winning number, cash prize amount or description of a merchandise prize, and retain the winning paddlewheel ticket.
13. All paddlewheel 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 paddlewheel ticket cards into one or more quarters. Any paddlewheel ticket cards of a series which remain unsold during a quarter when other paddlewheel ticket cards of that series were sold must be retained by the organization as part of its daily records, and must not otherwise be used or disposed of by the organization.
14. The following rules must be posted in a clear, legible manner near the paddlewheel table:

#### RULES

A paddlewheel is used for selection of the winner.

No player may purchase more than ten tickets for one spin.

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

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

A paddlewheel must make at least four revolutions.

Cash or merchandise prizes may be awarded.

A winner is not required to be present when the paddlewheel is spun; however, the winner shall claim the prize by the conclusion of the gaming activity for the day.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-07. Procedure for distributing paddlewheel chips to a paddlewheel table.

1. A fill slip must be prepared for the distribution of paddlewheel chips from the chip bank cashier to a paddlewheel table. No organization may transfer or make change of chips directly from 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 mechanically or electronically serially prenumbered forms and must be used in sequential order. The serial numbers of all fill slips in the possession of an organization must be accounted for by employees with no incompatible functions. All original and duplicate void fill slips must be marked "VOID" and be legibly signed by the preparer.
3. A fill slip must be prepared by a chip bank cashier, pit boss, or site manager whenever paddlewheel chips are distributed to the paddlewheel table from the chip bank cashier.
4. On the original and duplicate fill slip, at least the following information must be recorded:
  - a. Reference to "paddlewheels".
  - b. Date and time.
  - c. Denomination of paddlewheel chips.
  - d. Quantity and total dollar value, by denomination, of paddlewheel chips.
  - e. Grand total dollar value of the paddlewheel chips.
  - f. Table number, if required by section 99-01-15-03.
  - g. Legible signature of a chip bank cashier.
5. After preparation of a fill slip, the original copy must be retained by the chip bank cashier.
6. If an organization has a site manager or authorized gaming employee on duty who is not presently the chip bank cashier or wheel operator, 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 paddlewheel table.

7. A wheel operator shall verify the information on the duplicate copy of the fill slip and, if correct, legibly sign the duplicate copy and deposit it in the paddlewheel drop box.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-08. Procedure for removing paddlewheel chips from a paddlewheel table.

1. A credit slip must be prepared for the removal of paddlewheel chips from the paddlewheel table to the chip bank cashier. No organization may transfer or make change of chips directly from 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 mechanically or electronically serially prenumbered forms and must be used in sequential order. The serial numbers of all credit slips in the possession of an organization must be accounted for by employees with no incompatible functions. All original and duplicate void credit slips must be marked "VOID" and be legibly signed by the preparer.
3. A credit slip must be prepared by a wheel operator, pit boss, or site manager whenever paddlewheel chips are returned from a paddlewheel table to a chip bank cashier.
4. On the original and duplicate credit slip, at least the following information must be recorded:
  - a. Reference to "paddlewheels".
  - b. Date and time.
  - c. Denomination of paddlewheel chips.
  - d. Quantity and total dollar value, by denomination, of paddlewheel chips.
  - e. Grand total dollar value of the paddlewheel chips.

- f. Table number, if required by section 99-01-15-03.
  - g. Legible signature of a wheel operator.
5. After preparation of a credit slip, the original copy must be deposited by a wheel operator in the paddlewheel drop box.
  6. If an organization has a site manager or authorized gaming employee on duty who is not presently the chip bank cashier or wheel operator, this person shall:
    - a. Verify the quantity and dollar value of the chips.
    - b. Legibly sign the original credit slip.
    - c. Transfer the copy of the credit slip with the chips to the chip bank cashier.
  7. A chip bank cashier shall verify the information on the duplicate copy of the credit slip, and if correct, legibly sign the duplicate copy and retain it.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-09. Requirement for safeguarding chips and paddlewheel ticket cards.

1. A gaming employee or volunteer shall safeguard the paddlewheel and twenty-one chips by securing the chips in a safe storage place or, if the paddlewheel table has been opened and no wheel operator is stationed at that table, securing the chip tray with a locking chip tray cover.
2. A gaming employee or volunteer shall safeguard paddlewheel ticket cards by securing the cards in a safe storage area or, if the paddlewheel table has been opened and no wheel operator is stationed at that table, remove the cards from the table.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-10. Purchase of paddlewheel tickets and tips to be made with chips only. Except for the application of subsection 3 of section 99-01-15-15, all purchases of paddlewheel tickets and tips must be made with paddlewheel or 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 bets or tips.



History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-11. Person prohibited from bringing or using personal chips. No person may bring onto a gaming site, nor introduce into any paddlewheel game, any paddlewheel chip for use in wagering other than a paddlewheel or twenty-one chip obtained from the organization. No organization may redeem, exchange, or allow to be used as a paddlewheel wager at the site any paddlewheel or twenty-one chip issued by another organization. The organization may allow a player to use the organization's twenty-one chip to purchase a paddlewheel ticket.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-12. Chip bank services.

1. The value at which paddlewheel or twenty-one chips are sold and redeemed must be conspicuously posted and visible to each person prior to that person purchasing chips.
2. An organization shall sell paddlewheel or twenty-one chips at the paddlewheel table. However, a player may use twenty-one chips to play paddlewheels. Chips must be sold for cash only, and no credit of any nature may be extended by an organization to a person purchasing chips. A check may not be accepted for purchase of chips at a paddlewheel table.
3. Cash taken in on paddlewheel chips sold must be kept completely separate and apart from all other cash received by the organization until after the cash has been counted. Except for a two-person audit team, no gaming employee or volunteer may access the contents of the paddlewheel drop box prior to the time of the count by a count team, financial institution, licensed and bonded provider of security, or security agency.
4. An organization shall redeem its chips for cash at the value for which they were sold, except when the chips were obtained or being used unlawfully. The redeemed chips must be kept completely separate and apart from the chip bank until after the organization completes the daily activity records. A cash bank used by the organization to redeem its paddlewheel chips may be combined with the twenty-one cash bank; however, this combined cash bank must be kept completely separate and apart from all other cash of the organization.
5. A gaming employee or volunteer shall redeem a wheel operator's tips (chips) through a cash bank. The wheel operator shall

redeem the actual paddlewheel chips received as tips from players and may not exchange those chips for other chips from any chip tray. This rule does not preclude pooling of tips.

6. No gaming employee or volunteer may take any chips, including tips, to a dressing room, restroom, lounge, or any other location outside the physical area of the gaming site where games of chance are conducted. The wheel operator shall redeem the tips prior to leaving the gaming site.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-13. Opening and closing a paddlewheel and paddlewheel table.

1. To open a paddlewheel, a gaming employee or volunteer shall:
  - a. Inspect each peg or pin and the pointer for uneven wear and immediately replace any worn peg or pin or worn pointer.
  - b. Evaluate the balance of a paddlewheel by:
    - (1) Inspecting the back of the paddlewheel for a foreign object that may affect the paddlewheel's balance.
    - (2) Positioning the pointer so it does not interfere with the spin of the paddlewheel. The paddlewheel must be slowly rotated forty-five to ninety degrees at a time in one direction. While the paddlewheel is spinning, the organization shall determine whether there is any abnormality in the rotation or any reverse rotation after the paddlewheel stops. The wheel must continue to be rotated until the entire wheel has been evaluated by this method in both directions. If the paddlewheel is out of balance, the organization shall balance the paddlewheel prior to conducting paddlewheels.
2. To open a paddlewheel table, a gaming employee or volunteer shall:
  - a. For a paddlewheel table that uses paddlewheel ticket slots, lift the top of the table and inspect the cavity for any paddlewheel ticket, paddlewheel chip, or foreign object that may have fallen through the slots.
  - b. Secure a paddlewheel chip tray and paddlewheel drop box to a paddlewheel table.

3. To close a paddlewheel, a gaming employee or volunteer shall place a cover over the paddlewheel or otherwise make it inoperable for use.
4. To close a paddlewheel table, a gaming employee or volunteer shall:
  - a. Notify the players that the players' paddlewheel chips must be redeemed through the cash bank cashier.
  - b. Collect all outstanding identification cards (see subsection 5 of section 99-01-15-17) from the players.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-14. Number of gaming employees or volunteers and players.

1. For a series of paddlewheel ticket cards involving the use of a paddlewheel table as described by subsection 2 of section 99-01-15-01, no organization may conduct the series unless at least two gaming employees or volunteers are on duty at the gaming site.
2. Unless there is insufficient space for the mobility of players, there is no limit on the number of players who may simultaneously play paddlewheels. If there is insufficient space, an organization may limit the number of players.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-15. Procedure for accepting cash at a paddlewheel table. A wheel operator, upon receiving currency from a player at a paddlewheel table for the purchase of paddlewheel or twenty-one playing chips, shall:

1. Spread the currency on top of the paddlewheel table in full view of the player who presented the currency and in full view of any gaming person who serves in a supervisory position or pit boss assigned to the table.
2. Verbalize the amount of the currency in a tone of voice loud enough to be heard by the player who presented the currency and all the other players at the table.
3. If the player desires to purchase a paddlewheel ticket valued equal to the player's currency, for the immediate next spin of

a paddlewheel, the wheel operator may exchange the player's currency directly for the paddlewheel ticket thereby bypassing the paddlewheel chip. Otherwise, the wheel operator shall give the player paddlewheel chips equivalent to the player's

currency. Then the wheel operator shall take the currency from atop the paddlewheel table and place the currency in the drop box attached to the table.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-16. House odds restricted. The house odds, expressed as a percentage, for each differently colored number or symbol and each different set of colored numbers or symbols (line bet), including an optional odd or even bet, must be within the range of ten to thirty percent. House odds is computed by the formula  $(A - (B \times C)) \div A = D$  where:

A = Number of similar colored numbers or symbols, number of similar colored sets of colored numbers or symbols, or number of odd or even numbers that have the same prize payoff.

B = Value of the prize payoff, expressed as a whole number, of a winning one dollar paddlewheel ticket for a particular colored number or symbol, particular colored set of colored numbers or symbols, or particular odd or even number.

C = Number of times that a particular colored number or symbol, particular colored set of colored numbers or symbols, or particular odd or even number is present within "A".

D = House odds, expressed as a percentage.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-17. Betting.

1. A gaming employee or volunteer may not use a series of paddlewheel ticket cards:
  - a. That does not have a state gaming stamp affixed to the flare of the series.
  - b. That is not comprised of one hundred paddlewheel ticket cards.
  - c. When the game serial number, written on the state gaming stamp, differs from the lowest numbered paddlewheel ticket

card game serial number (see subsection 6 of section 99-01-20-23) of the series.

2. All tickets of a series of paddlewheel ticket cards must be sold for the same price. A gaming employee or volunteer may sell a paddlewheel ticket to a player for one dollar or two dollars. The gaming employee or volunteer may sell one dollar and two dollar priced tickets for the same spin of the paddlewheel. The gaming employee or volunteer may sell a maximum of ten tickets to a player for betting on each spin of a paddlewheel. The maximum betting limit of the player for each spin is twenty dollars (ten tickets multiplied by two dollars per ticket). Each ticket must be sold separately and each ticket constitutes a separate and equal chance to win with all other tickets sold. No gaming employee or volunteer may sell one or more tickets to a player at a discount (for example, three tickets for the price of two tickets). No player may be required to purchase more than one ticket, or to pay for anything other than the ticket, in order to play paddlewheels. No side bet is allowed.
3. Paddlewheel ticket cards of a series must be used in numerical sequence of the cards' game serial number. All paddlewheel tickets must be sold on the gaming site and immediately preceding a spin of the paddlewheel to be valid for that spin. An organization may establish a posted house policy to limit a player's maximum wager for a spin of the paddlewheel to less than ten tickets bet on one colored number or symbol or one set of colored numbers or symbols.
4. Except for the application of subsection 3 of section 99-01-15-15, a player shall place a bet by first purchasing paddlewheel tickets with paddlewheel or twenty-one chips equal to the amount the player desires to bet on the immediate next spin of a paddlewheel. The player shall purchase tickets by placing the player's paddlewheel chips in a stack on the paddlewheel table and sliding the stack of chips toward and within reach of a wheel operator. Then, the wheel operator shall:
  - a. Count the value of the player's chips by breaking the stack down and placing the chips in front of the chip tray.
  - b. Carefully tear off one or more tickets, equal to the value of the player's chips, from a paddlewheel ticket card.
  - c. Count the paddlewheel tickets, in terms of monetary value, in front of the player.
  - d. Place the tickets on the paddlewheel table and slide the tickets to within reach of the player.

- e. Place the player's chips in the paddlewheel table chip tray.
5. When a player first purchases paddlewheel chips, a wheel operator shall provide the player with a card containing a unique identification number. The player shall return the card to the wheel operator immediately after the player stops playing.
6. A wheel operator shall remind the players that:
  - a. The players may buy only as many paddlewheel tickets as the players desire to bet on the immediate next spin of the paddlewheel and that no player may carry over a ticket to any subsequent spin.
  - b. The players must write the players' assigned identification number on the back of the players' paddlewheel tickets prior to the players placing the tickets in a betting slot.
7. A player shall bet all the player's purchased paddlewheel tickets on the immediate next spin. Unless otherwise restricted, the player may bet more than one ticket on the same colored number or symbol or set of colored numbers or symbols for a spin. If the player purchases a ticket and does not bet the ticket on the immediate next spin, the ticket is void, the ticket may not be wagered on any other spin of the paddlewheel, and the player shall surrender the ticket to a wheel operator who shall visibly deface or tear the ticket in half and discard the ticket in a container which is not easily accessible by a player.
8. To bet, a player shall carefully place the player's paddlewheel ticket in a betting slot or other retaining device of a particularly colored number or symbol or set of colored numbers or symbols on the paddlewheel table. If the table uses paddlewheel ticket slots, the player may not force the player's ticket all the way through the slot into the cavity of the table; otherwise, the ticket is void. A wheel operator may assist the player provided that the wheel operator first verbally announces, in a tone of voice loud enough to be heard by all the players at the table, that the wheel operator is assisting the player and what the rendered assistance is.
9. A player may bet a paddlewheel ticket while another player is purchasing a ticket.
10. A betting limit must be the same for all the paddlewheel tables at a gaming site and be consistently applied when the game paddlewheels is conducted. A bet made by a player that exceeds the ten ticket limit of subsection 2 or exceeds the maximum wager, if any, on one colored number or symbol or one

set of colored numbers or symbols of subsection 3 is void and the player's paddlewheel tickets in excess of the limit are not reusable.

11. There may be no partially sold paddlewheel ticket cards for a spin. If all the paddlewheel tickets of a card cannot be sold, an organization shall refund the gross proceeds to the players in exchange for the unplayed tickets of that card.
12. A wheel operator shall sequentially number each spin of the paddlewheel for each day of activity beginning with "one" for the first spin of the day and progressing with each spin. The spin number must be written either on the face of the first stub for which paddlewheel tickets have been sold for a particular spin or on the back of the last stub from which tickets have been sold for a particular spin. All spin numbers must be consistently recorded in the same location on the stub for all spins of the day. However, when the sale of tickets for a particular spin continues into a new series of paddlewheel ticket cards, then the sequential spin number must be written on the face of the first stub of the new series from which tickets are continuing to be sold. For each subsequent spin of the same series, the spin number must be recorded consistent with the organization's standard practice - written either on the face of the first stub for which paddlewheel tickets have been sold or on the back of the last stub from which tickets have been sold. The wheel operator may not continue the sale of tickets for any particular spin into a new series unless the flare for the new series reflects the same prize payout as the flare associated with the previous series. The flare of the new series for which the sale of paddlewheel tickets is continuing and the flare of the finished series from which paddlewheel tickets were sold for the same spin must be posted until the end of the spin. Then, the old flare must be removed.
13. After all the players who desire to purchase a paddlewheel ticket for the immediate next spin of the paddlewheel have purchased a ticket and prior to a wheel operator spinning a paddlewheel, the wheel operator shall announce to the players that the players' bets for the next spin must now all be placed and that the spin will occur.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.4, 53-06.1-17

99-01-15-18. Conduct and play.

1. When a wheel operator has determined that no other player desires to purchase a paddlewheel ticket for the immediate next spin of the paddlewheel, that there is no partially sold paddlewheel ticket card, and that the players have bet all the

players' tickets, the wheel operator shall announce "bets closed". Thereafter, no player may bet a paddlewheel ticket, change a bet of a previously placed ticket, touch any ticket, or place the player's hands on top of the paddlewheel table.

2. A wheel operator shall double spin a paddlewheel by first grasping a peg, pin, or edge of the paddlewheel and slowly pulling the peg, pin, or edge of the paddlewheel in a downward or upward direction and releasing the peg, pin, or edge of the paddlewheel. While the paddlewheel is in motion, the wheel operator shall again grasp another peg, pin, or edge of the paddlewheel and pull it in a consistent downward or upward direction with sufficient force to ensure that the paddlewheel rotates at least four full revolutions. If four revolutions are not made or a foreign object interferes with the natural spin of the paddlewheel, the spin is void and the paddlewheel must be spun again.
3. A winning number or symbol is determined by the alignment of the paddlewheel in relation to the pointer when the paddlewheel stops. When the paddlewheel stops, a wheel operator shall announce the winning colored numbers or symbols in a tone of voice loud enough to be heard by all the players at the table. The winning colored number or symbol and set of colored numbers or symbols must be announced in the sequence of the winning colored number or symbol from the outermost circle first and then continuing to the innermost circle last. The wheel operator shall initial and record the winning colored number or symbol either on the face of the lowest game serial numbered paddlewheel ticket card stub or on the back of the highest numbered paddlewheel ticket card stub of the group of cards related to that spin of the paddlewheel (see subsection 12 of section 99-01-15-17).
4. A wheel operator shall first remove all losing paddlewheel tickets from the slots or other retaining device and visibly tear in half and discard the tickets in a container which is not easily accessible by a player. Then, the wheel operator shall pay off the winning tickets, slot by slot or retaining device by retaining device, either in the sequence of the lowest payoff bet first and continuing to the highest payoff bet last or in the sequence of the payoff bets which are most accessible to the players (outer paddlewheel table area) first and then continuing to the payoff bets which are least accessible to the players (inner paddlewheel area) last. To pay off the winning tickets the wheel operator shall:
  - a. Take a winning paddlewheel ticket from a betting slot or other retaining device and ensure that the game serial number of the winning ticket is within the range of game serial numbers of paddlewheel ticket cards sold for that spin of the paddlewheel (see subsection 12 of section 99-01-15-17).



- b. Circle or record the winning colored number or symbol on the face or on the backside of the winning ticket with a nonerasable marker.
        - c. Pay off the winning ticket, according to the particular prize payoff of the colored number or symbol or set of colored numbers or symbols and the payoff procedure of subsection 5, directly to the player who has the card containing the unique identification number written on the back of the ticket. The wheel operator shall ask the players which player has been assigned the specific unique identification number of the winning ticket and the player who possesses the card shall show the wheel operator the player's card prior to the payoff.
        - d. Record on the face or on the backside of the winning ticket the prize amount with a nonerasable ink pen or felt tip marker.
5. The payoff procedure is:
  - a. A wheel operator shall take paddlewheel or twenty-one chips from the paddlewheel table's chip tray approximately equal to the prize amount of a player's winning paddlewheel ticket, place the chips in front of the chip tray, count out a stack of chips equal to the prize amount, and return excess chips to the chip tray or take additional necessary chips from the chip tray.
  - b. If a player wins a total prize payoff of more than one hundred dollars from one winning paddlewheel ticket, a wheel operator shall do a record of the win. See section 99-01-15-23.
  - c. A wheel operator shall slide the stack of chips toward and within reach of the player whose paddlewheel ticket won and recount the value of the player's chips by breaking the stack down.
  - d. A wheel operator shall ensure that the player understands the amount of chips being paid.
6. After a prize payoff is made and the required information properly recorded, a wheel operator shall store the winning paddlewheel ticket in a secure place. The paddlewheel ticket card stubs of the cards related to that spin may be torn off, as a group, banded or stapled together with the lowest game serial numbered card stub on top and stored in a secure place. Otherwise, the paddlewheel ticket card stubs of the cards related to that spin may be retained with the series of paddlewheel ticket card stubs.

7. A series of paddlewheel ticket cards 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 paddlewheel ticket cards into two or more quarters. Any paddlewheel ticket card of a series which remains unsold during a quarter when other paddlewheel 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.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-07.4, 53-06.1-17

99-01-15-19. Wheel operator mistakes. Unless an organization has a written policy governing particular wheel operator mistakes, the following procedures must be applied for the stated wheel operator mistakes:

1. If a wheel operator inadvertently does not sell all the paddlewheel tickets of a card and the paddlewheel has been spun, the wheel operator shall uniquely mark each of those unsold paddlewheel tickets and sell the tickets for the immediate next spin of the paddlewheel.
2. If a winning paddlewheel ticket is unclaimed for any reason, such as when no player at the paddlewheel table possesses the card containing the unique identification number written on the back of the ticket, a wheel operator shall mark on the face of the winning paddlewheel ticket "unclaimed winner" and retain the ticket related to that spin in the respective envelope.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-15-20. Posting of rules and prize payoff information.

1. The following rules must be posted in a clear, legible manner near the paddlewheel table:

RULES

No credit.

No checks may be accepted or chased at the paddlewheel table. Change is not available.

A player must first purchase paddlewheel or twenty-one chips from the wheel operator. However, the player may use twenty-one chips purchased from a dealer at a twenty-one table.

Chips must be safeguarded. A chip dropped into a table betting slot may be retrieved by the person-in-charge at the convenience of the organization (this rule must be posted only if table betting slots are used).

Purchase, with chips, only as many paddlewheel tickets as the player desires to bet on the immediate next spin of the paddlewheel. However, no player may purchase more than ten tickets for one spin.

A player is assigned a unique identification number which the player must write on the back of purchased paddlewheel tickets.

Place a bet by carefully inserting a paddlewheel ticket in a selected betting slot or other retaining device on the paddlewheel table. Jammed tickets are void.

No player may touch a paddlewheel ticket after the wheel operator announces "bets closed" and until the wheel operator announces "place bets".

A player may not spin the paddlewheel.

A paddlewheel must make at least four revolutions.

If the pointer stops directly on top of a peg or pin, the number preceding the peg or pin is the winning number.

A winning "odd" or "even" bet is determined by a winning number of only the designated colored circle. However, a player loses all "odd" and "even" bets if the pointer stops on a specially designated "house number" (this rule must be posted only if an "odd" or "even" bet is accepted).

A prize payout is made in chips which may be redeemed through the cashier.

A player must be present to win.

No side bet is allowed.

2. Except as otherwise provided by this rule, prize payoff information must be posted in a clear, legible manner near the paddlewheel table. The prize payoff information must reference each differently colored number or symbol and each different set of colored numbers or symbols (line bet), including an optional odd or even bet, of a paddlewheel table and must state the respective prize payoff. The prize payoff is the relationship of the value of paddlewheel or twenty-one chips to be paid out as a prize compared to a winning one dollar paddlewheel ticket. The prize payoff must be stated as "PAYS \_\_\_\_ to \_\_\_\_" with the word "to" being synonymous with

":" and "for". For example, for a red colored number or symbol which pays forty dollars for a winning one dollar paddlewheel ticket, the prize payoff information must reference the red colored number or symbol and must state the prize payoff as "EXACT NUMBER RED PAYS 40 to 1". In lieu of posting the prize payoff information, an organization may apply subsection 4 of section 99-01-15-03.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-21. Paddlewheel drop box - Transportation from the paddlewheel table and storage.

1. Unless the drop box cash is counted immediately when a drop box is removed from a paddlewheel table, the drop box removed must be transported by the person-in-charge and escorted by a gaming employee or volunteer directly to and secured in a safe storage place.
2. A drop box, when not in use during a shift, may be stored on the paddlewheel table provided that there is adequate security. If adequate security is not provided, the drop box must be stored in a safe storage place. An organization shall exercise appropriate key control to the safe storage place to restrict access to only an authorized gaming employee or volunteer.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-22. Drop box cash count by a two-person count team.

1. A drop box must be opened by at least a two-person count team. The two-person count team must consist of at least one person who is an authorized agent of the organization's bookkeeper and a second person who is a gaming employee or volunteer. The bookkeeper may be the authorized agent. The authorized agent of the bookkeeper may not be a gaming employee or volunteer. The count team may not be comprised of two persons who have a supervisor/subordinate relationship. One count team member may not be a common household member, spouse, child, parent, brother, or sister of the second count team member.
2. A key utilized to unlock a drop box from a paddlewheel table must be maintained and controlled by the person-in-charge and provided to the gaming employee or volunteer who is participating in the drop box cash count. The key to one lock

securing the contents of the drop box must be maintained and controlled by the authorized agent of the organization's bookkeeper. If there are two separate locks which secure the contents of the drop box, a key to the second lock must be maintained and controlled by a gaming employee or volunteer.

3. Each person of a two-person count team shall independently count the drop box cash in the immediate presence of the other person and resolve any difference between the two counts. When both members agree with the drop box cash count, one member shall record the count, and both members shall legibly sign and date in ink, the paddlewheel drop box cash count report. The count team shall prepare a two-part bank deposit record. The authorized agent of the organization's bookkeeper shall forward the drop box cash count report and one part of the bank deposit record directly to the bookkeeper. The gaming employee or volunteer shall carry the bank deposit (cash) and the second part of the bank deposit record directly to a financial institution. Then, the gaming employee or volunteer shall forward the validated bank deposit slip or receipt directly to the bookkeeper. This rule must be applied unless written approval is obtained from the attorney general to use an alternate bank deposit procedure which meets this rule's internal control objective.
4. This section does not apply to 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-23. Record of the win. When a player wins a total prize payoff, in the form of chips, of more than one hundred dollars from one winning paddlewheel ticket related to one spin of the paddlewheel, a wheel operator shall make a record of the win. However, the attorney general may require an organization to make a record of the win of any prize payoff amount determined by the attorney general. The record of the win must be completed for the total prize payoff regardless if the player intends to split the player's prize payoff with another player. The record of the win must be a mechanically or electronically sequentially numbered receipt. The receipt must include at least the following information:

1. A wheel operator shall legibly print, in ink, on the face of the 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. Amount of the prize payoff, in the form of chips.
  - f. Date of the prize payoff.
  - g. If the payee is personally known by the wheel 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 wheel 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 wheel 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 wheel operator 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 forms of identification. The wheel operator 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 wheel operator may not make any prize payoff unless and until the payee has fully and accurately furnished to the wheel operator 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 wheel operator shall mail the prize payoff, by check, to the payee.
  - i. Legible signature of the wheel operator who completed the record of the win.
2. After a record of the win is completed by the wheel operator, the payee shall legibly sign and date, in ink, the record of the win to acknowledge the prize payoff.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-15-24. Person prohibited from falsifying record of the win.

1. No wheel operator or player may falsify any information of a record of the win. No wheel operator may willfully or deliberately disregard the requirements of section 99-01-15-23 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 wheel operator 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 this section. No player who has actually won a prize payoff of an amount requiring a record of the win may, through a fraudulent scheme, have any other person claim the cash prize.
2. If a wheel operator determines that a player has falsified, attempted to falsify, or conspired with another person to falsify the record of the win, the wheel operator shall deny the player the prize payoff and notify the attorney general or a local law enforcement agency.
3. An 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-25. Organization prohibited or restricted in the conduct of paddlewheels. The attorney general may prohibit an organization from conducting paddlewheels, or may require an organization to comply with certain restrictions, including maintaining a record of wheel operators' tips, use of a triple-locking drop box, and accounting for the daily activity on a log report by each spin number, for conducting paddlewheels at any site if the attorney general determines that the organization's paddlewheels activity at a 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-26. Reconciliation of inventory control records.

1. An organization shall, on at least a quarterly basis, reconcile (compare) its inventory control records (see subsection 7 of section 99-01-15-27) of series of paddlewheel ticket cards that are recorded as being in play and in inventory to series of paddlewheel ticket cards that are actually in play and in inventory. A gaming employee or volunteer shall physically count the actual series of paddlewheel ticket cards in play and in inventory, compare this count to the inventory control records, and resolve any difference. The physical count must be performed by a person other than the person who is primarily responsible for safeguarding the physical inventory of series of paddlewheel ticket cards.
2. A gaming employee or volunteer 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-27. Recordkeeping system required.

1. Except as provided by subdivision a of subsection 2 and by subdivision a of subsection 3, a licensed organization shall retain daily accounting records with regard to paddlewheels for three years from the end of the quarter in which the paddlewheel 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. For each series of paddlewheel ticket cards described by subsection 1 of section 99-01-15-01, a recordkeeping system must include at least the following records:
  - a. The flare, with the state gaming stamp affixed, together with all unsold paddlewheel ticket cards. The flare and the unsold paddlewheel ticket cards must be retained by the organization for one year from the end of quarter in which the paddlewheel activity occurred.



- b. 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 cash must be verified by at least two persons. Each person of the two-person verification team shall independently count the cash on hand in the immediate presence of the other person. When both persons agree with the count of the cash, each person shall legibly sign at least the person's last name and date that verification.
  - c. For each paddlewheel ticket card, the date played, winning number, winning paddlewheel ticket, and cash prize amount or description and actual cost of a merchandise prize.
  - d. A summary of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long and short, and bank deposit. The summaries of all series of paddlewheel ticket cards conducted during a quarter must reconcile to the paddlewheel activity reported on the North Dakota gaming tax return.
3. For each series of paddlewheel ticket cards described by subsection 2 of section 99-01-15-01, a recordkeeping system must include at least the following records:
  - a. The flare, with the state gaming stamp affixed, groups of sold paddlewheel ticket card stubs, winning paddlewheel tickets, and all unsold paddlewheel ticket cards. The flare and the unsold paddlewheel ticket cards must be retained by the organization for one year from the end of the quarter in which the paddlewheel activity occurred.
  - b. Records documenting the daily starting and ending cash bank and paddlewheel chip bank on hand. The paddlewheel cash bank and chip bank may be combined with the twenty-one cash bank and chip bank. The count must be recorded by each denomination of currency and chip. The count of the cash bank and chip bank must be verified by at least two persons. Each person of the two-person verification team shall independently count the cash bank and chip bank in the immediate presence of the other person. When both persons agree with the count of the cash bank and chip bank, each person shall sign at least the person's last name and date that verification.
  - c. Records documenting the daily activity on a log report, including the site name, gaming stamp number, game serial number of the lowest numbered paddlewheel ticket card of the series, beginning paddlewheel ticket card number sold, last paddlewheel ticket card number sold, number of voided tickets, number of cards sold, number of tickets per card, cost per ticket, gross proceeds, prizes, and adjusted gross proceeds.

- d. Records documenting the daily activity of each paddlewheel 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, and win and loss results.
  - e. A summary of gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit. The summaries of all series of paddlewheel ticket cards conducted during a quarter must reconcile to the paddlewheel activity reported on the North Dakota gaming tax return.
  - f. A paddlewheel chip master inventory control log and site inventory control log must be maintained to record additions and reductions of paddlewheel chip inventories at the home office and at a site. The logs must be least record the dates the chips are added to and withdrawn from the home office chip inventory and site chip inventory, by denomination of paddlewheel chip. The organization shall, on at least a quarterly basis, reconcile (compare) its inventory of paddlewheel chips that are recorded as being at the home office and site to the paddlewheel chips that are actually in inventory at the home office and site. The organization shall physically count the actual paddlewheel chips in inventory at the home office and site, compare this count to the inventory control log, resolve any difference, and document the reconciliation in writing. The physical count must be performed by a person other than the person who is primarily responsible for safeguarding the physical inventory of chips. The organization may use the same master and site inventory control logs for paddlewheel and twenty-one chips.
4. All daily activity records must be completed by use of a nonerasable ink pen, and be legibly signed with at least the person's last name and dated by the person completing each record.
  5. Unless the gaming activity of a closed series of paddlewheel tickets is summarized by a person who is independent of any person who was directly or indirectly involved in conducting the series of paddlewheel ticket cards while the series was in play, including the site manager and the gaming manager, the summarization must be audited by a person who is independent of the person who summarized the closed series of paddlewheel tickets. If there is a variance between the summarization and the audit, the person who audited the series of paddlewheel tickets shall notify the gaming manager or other appropriate organization representative of the variance.

6. Records documenting the maintenance of a paddlewheel, including the site, name, date, maintenance performed, reason for the maintenance, name of the person who performed the maintenance, and signature of the maintenance person signifying that the paddlewheel is in proper working order.
7. Inventory control records must include at least the lowest and highest numbered paddlewheel ticket card numbers, type of paddlewheel ticket [for example, 40 x 3 x 120 (forty paddlewheel tickets to each paddlewheel ticket card, three numbers on each paddlewheel ticket, and one hundred twenty numbers on the paddlewheel)], cost per play, sales invoice number and date, date received, dates of issuance to and from a site, site name, quarter gaming tax return on which reported, and date and method of disposal for each series, by gaming stamp number and game serial number. Unless an organization has only one site which is the location of the organization's home office, the organization shall maintain inventory control records at each site and the records must include, for each series of paddlewheel ticket cards, at least the dates received from and returned to the home office, by gaming stamp number and game serial number.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-15-28. Actual cash profit bank deposit required by a licensed organization. For paddlewheels, 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 paddlewheel activity, the validated bank deposit slip or receipt must contain a reference to paddlewheels, date of the paddlewheel activity, deposit amount, and be included as part of the daily accounting records of that day's paddlewheel activity. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one day's paddlewheel 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 99-01-08-17 (bingo), 99-01-09-13 (raffles), 99-01-10-14 (charitable gaming tickets and punchboards), 99-01-11-07 (professional sports pools), 99-01-12-30 (twenty-one), 99-01-13-24 (poker), and 99-01-14-06 (calcuttas), and 99-01-16-21 (electronic-mechanical charitable gaming ticket dispensing devices). 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

CHAPTER 99-01-16  
ELECTRONIC-MECHANICAL CHARITABLE GAMING TICKET DISPENSING DEVICES

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99-01-16-01. Qualifications for use.

1. This chapter only applies to an organization which qualifies under either subsection 2 or 3 to have a restricted gaming employee of a licensed alcoholic beverage establishment (lessor) provide limited assistance to the organization in the conduct of a commingled game of charitable gaming tickets through the use of an electronic-mechanical charitable gaming ticket dispensing device at the leased gaming site. Otherwise, the provisions of chapter 99-01-10 apply.
2. All organizations that have a class A license may have a restricted gaming employee of an establishment provide limited

assistance to the organization in the conduct of charitable gaming tickets through the use of one or more devices at the gaming site.

3. An organization that has a class B license may have a restricted gaming employee of an establishment provide limited assistance to the organization in the conduct of charitable gaming tickets through the use of one or more devices at the gaming site provided that the organization's adjusted gross proceeds of all the organization's gaming sites did not exceed an average of sixty thousand dollars per quarter for the immediate previous fiscal year, July first through June thirtieth, for which North Dakota gaming tax returns were filed. If the organization did not file a gaming tax return for any quarter of the immediate previous fiscal year, the organization's qualification is based on the organization's average adjusted gross proceeds for the licensing fiscal year. For the purpose of this rule, adjusted gross proceeds includes the adjusted gross proceeds derived from a gaming site which is operated under the provisions of this chapter. If the organization's adjusted gross proceeds did exceed an average of sixty thousand dollars per quarter for the immediate previous fiscal year, the organization may otherwise qualify under this subsection provided that:
  - a. In the immediate previous fiscal year, the organization experienced extraordinary gaming activity that was material, unusual, and is not expected to reoccur in the licensing fiscal year or future fiscal years. If the organization had not experienced the extraordinary gaming activity, the organization would have qualified under subsection 3.
  - b. In the immediate previous fiscal year, the organization had more licensed gaming sites than the organization has licensed for the licensing fiscal year and the reduction in the number of gaming sites will make a material difference in the organization's adjusted gross proceeds for the licensing year. If the organization had not operated the additional gaming sites, the organization would have qualified under subsection 3.
  - c. In the immediate previous fiscal year, the organization had a different mix of gaming sites than the organization has licensed for the licensing fiscal year and the present mix of gaming sites will make a material reduction in the organization's adjusted gross proceeds for the licensing year. If the organization had not had a different mix of gaming sites, the organization would have qualified under subsection 3.
  - d. The organization makes a written request to the attorney general for the application of subdivision a, b, or c.

The request must include an explanation of the organization's qualification under subdivision a, b, or c, documentation, and a projected financial statement of gaming activity, by gaming site, for the licensing fiscal year.

4. If a class B organization qualifies under subsection 3 for a particular licensing fiscal year and has total adjusted gross proceeds exceeding an average of sixty thousand dollars per quarter for a subsequent fiscal year, the organization may not qualify for any additional gaming sites under the provisions of this chapter. Also, the organization shall discontinue using restricted gaming employees at the gaming site as provided by this chapter effective on June thirtieth of the licensing fiscal year in which the organization's total adjusted gross proceeds exceeded an average of sixty thousand dollars per quarter.
5. If a class A or class B organization qualifies under the provisions of this section, the organization may have a restricted gaming employee of an establishment assist in the conduct of charitable gaming tickets through the use of a device for:
  - a. The entire time in which the establishment is open for business.
  - b. Part of the time in which the establishment is open for business. The organization may have an establishment's restricted gaming employee assist in the conduct of charitable gaming tickets for only a certain part of a day or certain days of a week when the organization's gaming employee is not scheduled on duty. However, when the organization's gaming employee is scheduled on duty, a restricted gaming employee of an establishment may not provide limited assistance to the organization in the conduct of charitable gaming tickets and the organization shall apply the provisions of chapter 99-01-10.
6. This chapter does not prohibit an organization from conducting games of chance, other than charitable gaming tickets, when the organization's gaming employee is scheduled on duty.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-16-02. Manufacturing specifications. No electronic-mechanical charitable gaming ticket dispensing device may be approved, registered for use, or used unless the device meets all of the following manufacturing specifications:

1. If a device is designed to accommodate two or more different games of charitable gaming tickets, each compartment of the device must independently meet the provisions of this section.
2. Electrical and mechanical components and design principles may not subject a person to any physical hazard or cause electrical interference. The electrical power cord must be at least twelve feet [3.66 meters] in length and have a three prong ground at the male end of the cord. A surge protector must be installed in-line on the main electrical power line to a device.
3. An on/off switch that controls the electrical current used to operate a device must be located in a nonconspicuous place on the exterior of the device.
4. A device must have at least four columns for stacking charitable gaming tickets and have sufficient capacity to hold at least two thousand four hundred charitable gaming tickets.
5. A device must be adjustable for varying lengths and thicknesses of charitable gaming tickets. The device must accommodate a minimum charitable gaming ticket size of one and seven-eighths inches [47.6 millimeters] in width by two and five-eighths inches [64.77 millimeters] in length and a maximum charitable gaming ticket size of one and seven-eighths inches [47.6 millimeters] in width by four and one-fourth inches [107.95 millimeters] in length.
6. A transparent material must be placed directly in front of the columns of available charitable gaming tickets to enable a player to see a majority of the charitable gaming tickets.
7. A device must have a charitable gaming ticket dispensing outlet or tray to catch a dispensed charitable gaming ticket.
8. At least one electronic currency validator must be installed on a device. No coin validator is allowed.
9. A device must be capable of accommodating pricing of twenty-five cents, fifty cents, one dollar, and two dollars per charitable gaming ticket and dispense the correct number of charitable gaming tickets based on the amount of credit played. The standard price per charitable gaming ticket must apply to all the stacking columns.
10. An exterior door must have at least one keyed lock. The key must be different than all other keys used on other devices manufactured by the manufacturer. The internal space may not be accessible from outside the device when the exterior door is closed and locked.

11. A device may have an optional "All" player button that, when pressed, activates the device to dispense up to twenty-five charitable gaming tickets at one time from one particular column of charitable gaming tickets selected by the random number generator or player button sequencing concept.
12. A device must have an interior mode switch, interior dipswitch, or an exterior mode switch activated by a key that enables an authorized person to at least:
  - a. Set the price per charitable gaming ticket.
  - b. Access the accounting information required by subsection 13 and, if the device has nonresettable electronic meters, subsection 14.
13. There must be at least two independent resettable electronic accounting meters. The meters must maintain accounting information of at least four digits in length and be capable of maintaining the accounting information for at least six months after electrical power to a device is disconnected or the electrical current used to operate a device is switched off. The meters must record the:
  - a. Total value of currency validated.
  - b. Total number of charitable gaming tickets dispensed.
14. There must be at least two independent nonresettable electronic or mechanical accounting meters. The meters must maintain accounting information of at least six digits in length and be capable of maintaining the accounting information for at least six months after electrical power to a device is disconnected or the electrical current used to operate a device is switched off. The meters must record the:
  - a. Cumulative value of currency validated.
  - b. Cumulative number of charitable gaming tickets dispensed.
15. To ensure a commingling of charitable gaming tickets, a random number generator or a player button sequencing concept must be used to select a particular column of several columns of available charitable gaming tickets from which a charitable gaming ticket will be dispensed. A column selection process will be considered random if it does not produce a significant statistic of recurring patterns. To test a device's random number generator or player button sequencing concept, the attorney general may apply any mathematical statistical test necessary to ensure there are no recurring patterns within a set of data. A player button sequencing concept must field each player button at least one hundred times a second.



16. Instructions for player operation must be displayed on the front of a device. The instructions must be permanently affixed or placed under glass or other transparent material, and no stickers or other removable items may be placed on the front of the device. The attorney general may reject the instructions if they are incomplete, confusing, or misleading.
17. There must be one or more player buttons located on the front of a device that, when pressed, activate the dispensing of a charitable gaming ticket. However, excluding an "All" player button, the number of player buttons may not exceed the number of stacking columns. Regardless of which player button is pressed, the selection of a particular column from which a charitable gaming ticket is dispensed must be done by a random number generator or a player button sequencing concept. See subsection 15.
18. A device must have an LED display screen of at least four digits in length. However, if the device uses two independent nonresettable electronic accounting meters, the device must have an LED display screen of at least six digits in length (see subsection 14). The digits must be at least one-half of one inch [12.70 millimeters] in height. The value of currency validated must be displayed on the LED screen as a monetary credit value (not as a certain number of credits) which is drawn down as a device vends a charitable gaming ticket. The LED display screen must also display the accounting information required by subsection 13 and the charitable gaming ticket pricing information required by subdivision a of subsection 12.
19. A device must record every vend of a charitable gaming ticket and every currency validation, including a test vend of a charitable gaming ticket and a test validation of currency, on the accounting meters required by subsections 13 and 14.
20. If a device malfunction occurs or electrical power is interrupted, the value of credits previously displayed on an LED display screen must be correctly redisplayed immediately after the malfunction is cleared or electrical power is restored. However, this subsection does not apply if a device is rendered totally inoperable.
21. A column of available charitable gaming tickets must automatically discontinue operation, triggered by an electronic microswitch or optical switch, when the column has less than approximately fifty charitable gaming tickets remaining in it. However, this rule does not apply when an organization is closing a game at the end of a month or quarter at which time the organization may use a charitable gaming ticket weight or bypass switch to circumvent the microswitch or optical switch.

22. A device must automatically discontinue operation when any of the two nonresettable meters is disconnected, or when there is only one column of charitable gaming tickets remaining in order when the other columns of charitable gaming tickets are out of order due to a low level of charitable gaming tickets remaining in one or more stacking columns or due to jams. However, if there are unplayed credits on the device when there is only one column of charitable gaming tickets remaining in order when the other columns of charitable gaming tickets are out of order due to a low level of charitable gaming tickets remaining in one or more stacking columns or due to jams, the device may dispense charitable gaming tickets equal to the value of the unplayed credits from the remaining column prior to the device automatically discontinuing operation.
23. A permanently affixed identification plate must be displayed near the top of an exterior side panel of a device that contains the device's:
  - a. Manufacturer.
  - b. Serial number.
  - c. Model number.
  - d. Date of manufacture.
24. No device may have an auxiliary remote control unit for posting credits onto the device.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-03. Standards for an electronic currency validator. An electronic currency validator must:

1. Validate United States currency in only denominations of one dollar, five dollar, ten dollar, and twenty dollar bills and reject all other denominations of any other known currency.
2. Have an antipullback mechanism and be equipped with other antiheat devices that prevent cheating of the bill acceptor by mechanical means.
3. Be capable of preventing all known manipulations of United States currency.
4. Return invalid currency to a player.
5. Have a currency collection and stacker box.

6. If a malfunction occurs, automatically discontinue accepting or validating currency.
7. Be a model approved by the attorney general.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-04. Testing and approval.

1. No distributor may sell or otherwise provide an electronic-mechanical charitable gaming ticket dispensing device to an organization unless a model of the device has first been approved by the attorney general.
2. A manufacturer of a device shall provide a device model, a copy of the model's construction blueprint, wiring schematics, circuit analysis, technical and operation manuals, random number generator or player button sequencing concept source and object code computer programs, and other information requested by the attorney general to analyze, test, and evaluate the model. A manufacturer of an electronic currency validator shall provide a copy of the source and object code of the routines within the computer programs that determine whether or not currency will be accepted and other information requested by the attorney general to analyze, test, and evaluate the validator. A manufacturer of a device or electronic currency validator may provide a copy of letters of approval and test reports of the electronic currency validator from other states, federal jurisdictions, or independent testing laboratories. However, the electronic currency validator used must be approved by the attorney general.
3. The attorney general may require a manufacturer of a device and a manufacturer of an electronic currency validator to transport at least one prototype or working model of a device and an electronic currency validator, and the information required by subsection 2 to another state, federal jurisdiction, or independent testing laboratory that the attorney general designates for analysis, testing, and evaluation. The manufacturer shall pay all costs of the transportation, analysis, testing, and evaluation. The attorney general may require a manufacturer of a device to pay the anticipated actual costs, in advance, directly to the attorney general's designee. After completion of the analysis, testing, and evaluation, any overpayment of actual costs must be refunded to the manufacturer or the manufacturer shall pay any underpayment of actual costs.
4. The analysis, testing, and evaluation may include entire dismantling of the device. Some tests may result in damage or

destruction to one or more electronic or mechanical components or the device itself. The attorney general may require the manufacturer to provide the attorney general, other state, federal jurisdiction, or independent testing laboratory with specialized equipment for testing the device.

5. After the analysis, testing, and evaluation of a device's model have been completed by the attorney general's designee, the designee shall certify the results to the attorney general. The attorney general shall provide the manufacturer with a report containing determinations, conclusions, and pass/fail results. The report may contain recommendations for device modifications to bring it into compliance with section 99-01-16-02. Prior to approving a device's model, the attorney general may require a trial period to test the device's model in a gaming site not to exceed a time period set by the attorney general. During the trial period, the manufacturer may not make any modifications to the device's model unless approved by the attorney general.
6. After the attorney general approves a manufacturer's device's model, the manufacturer shall provide the attorney general with an approved device's model for an indefinite period. The attorney general may use the device's model for training and regulatory purposes. The manufacturer shall provide the attorney general a device's model and maintain it free of any charge.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-05. Modifications to a previously approved device model, electronic currency validator, or components. No manufacturer, manufacturer's distributor, or licensed distributor may modify the assembly or operational functions of an approved device model, electronic currency validator, or components unless a written "Request for Modification to an Approved Electronic-Mechanical Charitable Gaming Ticket Dispensing Device or Electronic Currency Validator" is filed with the attorney general and approved by the attorney general. The request must explain the type and reason for the modification. However, in an emergency, if a modification is necessary to prevent cheating or malfunction, temporary approval may be verbally requested from the attorney general prior to submitting a written request. A written request for permanent approval must be made within seven days of the temporary approval. The attorney general may apply subsections 3, 4,

and 5 of section 99-01-16-04 for approving a modification to a previously approved device model, electronic currency validator, or components.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-06. Sales invoice information required. A licensed distributor that sells or otherwise provides an electronic-mechanical charitable gaming ticket dispensing device to an organization shall provide the attorney general with at least the following information on a sales invoice:

1. Name, address, and license number of the organization.
2. Name and address of the manufacturer or manufacturer's distributor from whom the device was acquired.
3. Name of manufacturer.
4. Device serial number.
5. Device model number.
6. Date of manufacture.
7. Attorney general registration number.
8. Name of the gaming site where the device will be placed.
9. Expected date of the installation of the device.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-07. Registration requirement.

1. Each electronic-mechanical charitable gaming ticket dispensing device sold must have an attorney general registration stamp affixed to it. A manufacturer's distributor or licensed distributor shall affix a registration stamp to an approved device model when the device is received from a manufacturer or manufacturer's distributor. No person other than a manufacturer's distributor or licensed distributor may affix the registration stamp. The attorney general shall notify each manufacturer's distributor and licensed distributor which device model the attorney general has approved.

2. Each device registered must conform to the exact specifications of the device's model approved by the attorney general. A device not approved or not meeting the exact specifications constitutes sufficient cause for the attorney general to seize the unapproved device.
3. When a manufacturer's distributor or licensed distributor affixes a registration stamp to a device, the distributor shall complete a registration form prescribed by the attorney general and file the form with the attorney general.
4. No manufacturer's distributor or licensed distributor may transport a device out of North Dakota unless the distributor first requests and receives written permission from the attorney general.
5. No organization may remove or transfer a device from a gaming site to another gaming site unless the organization first requests and receives written permission from the attorney general. No organization may rotate a device among two or more gaming sites.
6. No person other than the attorney general may remove a registration stamp from a device without written authorization.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-08. Training required prior to operation.

1. A manufacturer's distributor is primarily responsible for the initial setup of an electronic-mechanical charitable gaming ticket dispensing device at a gaming site.
2. No electronic-mechanical charitable gaming ticket dispensing device may be placed in operation unless a manufacturer's distributor or licensed distributor first provides training to an organization's gaming employee or volunteer in the operation and service of a device model. No gaming employee or volunteer may have custody of the key of a device or actually access the interior of the device unless the gaming employee or volunteer has first participated in training as required by this section. The training must be scheduled at a convenient time and location within the state to ensure attendance and participation. A manufacturer's distributor or licensed distributor shall provide subsequent training and inform organizations of new developments in the service of the manufacturers' device.

3. A manufacturer's distributor and licensed distributor shall retain a record of the following training information for three years from the date of the training:
  - a. Training curriculum used for certification.
  - b. Name of instructor and qualifications.
  - c. Instructional materials.
  - d. Time, date, and location of the training.
  - e. List of organization employees who were certified.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-09. Notification of repair. Any repair to an electronic-mechanical charitable gaming ticket dispensing device by a manufacturer's distributor or licensed distributor must be reported in writing to the attorney general. A copy of the repair report, containing at least the following information, must be filed with the attorney general:

1. Date the organization notifies the manufacturer's distributor or licensed distributor of the need for a service repair.
2. Date repair was completed.
3. Name, address, and license number of the organization.
4. Name of the game site.
5. Name of manufacturer.
6. Device serial number.
7. Device model number.
8. Date of manufacture.
9. Attorney general registration number.
10. Explanation of malfunction.
11. Explanation of repair performed.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-10. Requirements of a manufacturer. A manufacturer shall:

1. Provide training regarding the operation of the manufacturer's electronic-mechanical charitable gaming ticket dispensing device to the attorney general.
2. Provide a maintenance and operation manual with each device.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-11. Requirements of a manufacturer's distributor. A manufacturer's distributor shall:

1. Maintain an adequate inventory of electrical and mechanical components to ensure a timely repair and continued, approved operation and play of an electronic-mechanical charitable gaming ticket dispensing device.
2. Provide technical assistance and training in the service and repair of a device.
3. Notify the attorney general in writing of any recurring electronic or mechanical malfunction or other problem experienced by a particular approved device model.
4. Provide a service agreement, upon request by an organization or a licensed distributor, for the maintenance, repair, or adjustment of a device.
5. Have a service technician trained, bonded, and certified by the manufacturer as qualified to service the manufacturer's devices.
6. Not access a device for performing a repair or service unless accompanied by a gaming employee or volunteer of the organization.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-12. Requirements of a licensed alcoholic beverage establishment.

1. A licensed alcoholic beverage establishment shall meet the requirements of North Dakota Century Code chapter 53-06.1 and this article, including formal directives of the attorney general, regarding the conduct of charitable gaming tickets



through the use of an electronic-mechanical charitable gaming ticket dispensing device.

2. An establishment shall provide immediate access to the attorney general or local law enforcement officials of all gaming records on the site for audit or inspection.
3. An establishment shall provide a secure premise for the placement and operation of a device. The establishment shall place a device in a location where alcoholic beverages are regularly dispensed and consumed in the ordinary and usual course of business. This location must be within the sight and control of the establishment's owner, manager, or bartender who is most likely to observe the play of the device while performing their normal duties.
4. An establishment shall not access or attempt to access the interior of a device. The establishment shall prohibit a person from tampering with or interfering with the operation or play of a device.
5. An establishment shall have the device turned off unless both of the following requirements are met:
  - a. A restricted gaming employee is on the site and available to redeem a winning charitable gaming ticket.
  - 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.
6. If a device malfunctions, an establishment shall immediately turn the device off. The establishment shall notify the organization licensed at the gaming site promptly of any malfunction or inoperative condition of a device. Also, if the organization fails to make a good faith effort to resolve the malfunction or inoperative condition, the establishment shall notify the attorney general. If a device is unrepaired or unserviced despite written notification to an organization by an establishment, it constitutes good cause for the establishment to terminate a rental agreement.
7. If a restricted gaming employee believes that a deal is defective, the employee shall immediately notify the organization. The employee may turn the device off pending instructions from the organization.
8. An establishment may, at its discretion, adopt a policy to accept or not accept a gaming related check from a player. A player's check must be payable to the establishment. The establishment is responsible for any loss related to a player's check returned by a financial institution as

uncollectible for any reason. The establishment may allow a player to buy back the player's check with cash and may return a player's check to the player as part of a prize payout.

9. No restricted gaming employee or any other employee of an establishment 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 subdivision a or b or both, of this subsection which the organization may provide for a commingled game unless the organization closes a commingled game (see subsection 19 of section 99-01-16-13). If an establishment provides this information on behalf of an organization, this special policy must be posted and continually updated:
- 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. No organization or establishment may guarantee the accuracy of this information. 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.

Example: A commingled game in which an organization considers the top three prize tier levels as top tier winning tickets when the following six denominations of prizes comprise a standard deal:

4 @ \$400  
4 @ \$100  
4 @ \$ 50  
\$ 10  
\$ 5  
\$ 2

The organization may post information about this game according to any of the following four alternatives:

- (1) Minimum  
Number by  
Denomination: To the best of our knowledge there is minimum of 4 - \$200 winning tickets, 4 - \$100 winning tickets, and 4 - \$50 winning tickets in this game at all times.

- (2) Minimum  
Number in  
the Aggregate: To the best of our knowledge there is  
a minimum of 12 winning \$200, \$100,  
and/or \$50 tickets in this game at all  
times (denominations must be  
referenced).
- (3) Minimum  
Range by  
Denomination: To the best of our knowledge there is  
a minimum of 4 to 8 winning \$200 and  
\$100 tickets each, and 8 winning \$50  
tickets in this game at all times.
- (4) Minimum  
Range in  
the Aggregate: To the best of our knowledge there is  
a minimum of 12 to 14 winning \$200,  
\$100, and/or \$50 tickets in this game  
at all times (denominations must be  
referenced).

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 or in the aggregate of unredeemed winning charitable gaming tickets that is within the level of denomination selected by the organization. No organization or establishment may guarantee the accuracy of this information. For example, the organization may post the specific number of winning tickets, by one or all denominations, determined by the organization, that remain unredeemed in the game. The posted information must be updated as winning tickets are redeemed and as new deals are added to the game. The establishment shall post a sign that essentially states that the posted number of unredeemed winning tickets, by denomination, is correct to the best of the establishment's knowledge - IT IS NOT GUARANTEED.

10. An establishment shall notify the organization when the minimum number or minimum range of numbers of winning charitable gaming tickets remain in the game as an indicator for the organization to add a deal to the game. See subdivision a of subsection 9.
11. An establishment shall post a 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. A restricted gaming employee 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 restricted gaming employee may not knowingly pay a prize to any player who is redeeming a winning charitable gaming ticket after the limit set by this policy.

12. No restricted gaming employee may assist a player in the opening of a purchased charitable gaming ticket except in the assistance of a disabled player.
13. Only a restricted gaming employee who has a temporary or permanent state work permit may redeem a winning charitable gaming ticket. The restricted employee shall only redeem an actual winning charitable gaming ticket purchased by a player at that establishment on that day.
14. No restricted gaming employee 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 establishment.
15. No restricted gaming employee 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.
16. Except when an establishment is returning a player's check to the player as part of a prize payout, a prize payout to a player for a redeemed winning charitable gaming ticket must be in the form of cash. No restricted gaming employee may unilaterally withhold any tip from the player's cash prize.
17. A restricted gaming employee shall deface the winning number, symbol, or set of symbols of each winning charitable gaming ticket when it is redeemed, regardless of the charitable gaming ticket's denomination.
18. No restricted gaming employee may publicly display an actual redeemed winning charitable gaming ticket. However, a restricted gaming employee may show a player, who is unfamiliar with the game of charitable gaming tickets, a redeemed winning charitable gaming ticket provided the charitable gaming ticket is defaced and remains in the physical possession of the restricted gaming employee.
19. An establishment shall be responsible for any loss related to a redeemed counterfeited charitable gaming ticket, a redeemed but subsequently lost ticket, or a ticket redeemed but which was not purchased at the gaming site.
20. A restricted gaming employee shall make a "record of win" for a redeemed winning charitable gaming ticket valued in excess

of one hundred dollars. For determining the prize value of whether a record of the win (section 99-01-16-16) is required when there are two or more winning prizes on one charitable gaming ticket (for example, a crisscross game), each prize value, rather than the aggregate, is the determining factor.

21. If a commingled game that has a last sale feature is being closed, a restricted gaming employee shall award a player who purchased the charitable gaming ticket designated "Last Sale Prize Winning Charitable Gaming Ticket" the value of the last sale feature.
22. A restricted gaming employee shall not pay a player for the player's unplayed credits on a device. However, if the device malfunctions, is rendered totally inoperable, and a player has a credit, the restricted gaming employee shall complete a three-part "credit redemption slip" prescribed by the attorney general. The restricted gaming employee shall distribute a copy of this form to the player and organization, and retain a copy. The organization is responsible for directly reimbursing the player by check.
23. The attorney general's standard recordkeeping system must be used unless written approval is obtained from the attorney general for use of an alternate recordkeeping system.
24. No establishment may permit a service technician, attorney general, gaming employee or volunteer, or any other person to access the interior of a device unless the person first provides proper identification to the establishment.
25. No establishment may have an organization, on behalf of the establishment, affix a sticker to a charitable gaming ticket in a device that entitles a player who purchases that charitable gaming ticket with a free prize provided by the establishment.
26. An establishment shall repay an organization's temporary loan of funds when the organization discontinues conducting charitable gaming tickets at the gaming site under the provisions of this chapter. See subsection 15 of section 99-01-16-13.
27. No establishment may interfere with or attempt to influence an organization's devotion of net proceeds to eligible uses.
28. No restricted gaming employee may, directly or indirectly, play charitable gaming tickets at the gaming site while the restricted gaming employee is on duty. A restricted gaming employee taking a temporary break is still considered on duty. An establishment may allow a restricted gaming employee to play charitable gaming tickets while off duty at the site, but only after three hours of active play have occurred since the

restricted gaming employee went off duty. If the establishment allows a restricted gaming employee to play charitable gaming tickets while off duty, the establishment 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.

29. No restricted gaming employee may, except as provided by sections 99-01-16-16 and 99-01-16-19, perform any of the organization's recordkeeping or audit functions.
30. A restricted gaming employee shall read this section and acknowledge in writing that the employee has read and understands this section relating to the employee's responsibilities. The acknowledgement must occur within fourteen days of the date the restricted gaming employee commences employment and within fourteen days of the date new administrative rules are promulgated. The acknowledgment must be dated, reference this section, and be a part of the organization's personnel file of the restricted gaming employee.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

#### 99-01-16-13. Requirements of a licensed organization.

1. An organization shall meet the requirements of North Dakota Century Code chapter 53-06.1 and this article, including formal directives of the attorney general, regarding the conduct of charitable gaming tickets through the use of an electronic-mechanical charitable gaming ticket dispensing device.
2. Deals of charitable gaming tickets must be commingled in an electronic-mechanical charitable gaming ticket dispensing device, subject to all of the following provisions:
  - a. Two or more deals must be placed in play at the same time at the start of a commingled game. First, all the charitable gaming tickets from one deal must be placed in two of the stacking columns until full and all the charitable gaming tickets from the second deal must be placed in two other stacking columns until full. Next, any leftover charitable gaming tickets from the two deals must be placed in a remaining empty column, if any. Afterwards, the number of charitable gaming tickets in each column must be evened out by transferring charitable gaming tickets from column to column. 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, an additional deal is added to the game when the organization is next scheduled to be at the site. The organization may add a deal at any time.

- 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 game at the organization's discretion. However, the organization cannot close the game unless all the top tier winning tickets have been redeemed. 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. The organization shall close the game at least at the end of each quarter or within five calendar days prior to the end of each quarter. The organization may place a new commingled game in play for the next quarter within five calendar days prior to the start of that 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 game unless at least fifty deals have been added to the game, the game's actual gross proceeds is at least thirty-five thousand dollars, the game has been in play for at least twenty-five consecutive calendar days, the organization discontinues gaming at the site, or the attorney general authorizes closure of the game due to security reasons. However, if fifty deals have been added to the game, if the game's actual gross proceeds is at least thirty-five thousand dollars, or if the game has been in play for at least twenty-five consecutive calendar days, the organization cannot close the game unless all the top tier winning tickets have been redeemed. Regardless of the restrictions of this subdivision, the organization shall close the game at least at the end of each quarter or within five calendar days prior to the end of each quarter. The organization may place a new commingled game in play for the next quarter within five calendar days prior to the start of that quarter.
- d. Each deal must be identical as to a particular type, name of game, and number of charitable gaming tickets. The primary colors or shades of colors of the charitable gaming tickets of two or more deals of a game may be different.

- e. Each deal must be manufactured with at least two top tier denomination winning charitable gaming tickets.
  - f. Only the flare of one deal of a game may have a last sale prize feature.
  - g. Each deal must be identified by its own flare displaying the state gaming stamp and game serial number. However, each deal's flare does not need to be posted.
  - h. A flare applicable to each deal must be identical as to:
    - (1) Name of game.
    - (2) Price per charitable gaming ticket.
    - (3) Number of prizes except for the one deal that may have a last sale feature.
    - (4) Denominations of prizes.
    - (5) Winning number, symbol, or set of symbols.
  - i. Except for a deal's game serial number and primary color of charitable gaming tickets, the charitable gaming tickets of the deals of a commingled game may have no visual differences.
3. No gaming employee or volunteer may take off a deal's manufacturer's cellophane shrink wrap or break a manufacturer's or distributor's permanent adhesive seal (if applicable) on a deal of charitable gaming tickets' package, box, bag, or other container until the deal is placed in a device for sale.
4. When a deal is received from a 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 device.
5. No gaming employee or volunteer may place in a device any deal which has in any manner been marked, defaced, tampered with or otherwise placed in a condition which may deceive the public or which affects the chances of winning or losing upon the taking of any chance.
6. No gaming employee or volunteer may place in a device any deal unless the flare has a North Dakota state gaming stamp attached which had been previously affixed thereto by a licensed distributor. Once affixed, that state gaming stamp may not be tampered with by any person.



7. No gaming employee or volunteer may modify or otherwise change the game serial number that was written on the state gaming stamp by the distributor.
8. No gaming employee or volunteer may modify or otherwise change a flare, including a last sale feature, after a deal has been received from a distributor, or use a flare that was received in an altered or defaced condition.
9. No deal may be placed in a device unless the cost for each charitable gaming ticket is clearly posted on the flare and no charitable gaming ticket may be sold for a price different than the price stated on the deal's flare. No deal may be placed in a device when the value of a prize to be awarded differs from the flare as received from the distributor.
10. When a deal of charitable gaming tickets is placed in play or added to a commingled game, the gaming employee or volunteer shall verify that the actual game serial number of the deal's charitable gaming ticket is the same as the game serial number written on the state gaming stamp. After verifying the game serial number, the gaming employee or volunteer shall acknowledge the verification in writing by initialing beside the game serial number on the commingled game's interim activity record on which the game serial number has been recorded or initialing the respective flare.
11. A gaming employee or volunteer shall attach a flare for a game to the interior of a device, in an enclosed display case attached to the exterior of a device, or on an adjacent wall. The winning number, symbol, or set of symbols and denomination of prizes must be fully visible to a player. The flare may not be easily removable by a player. If a deal has a last sale feature, the flare for that deal must be displayed when the game is being closed.
12. An organization shall conspicuously post a notice on the site containing certain administrative rules and organization policies related to the conduct of charitable gaming tickets. 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. Restricting access to a device to one player or a group of players is prohibited.
  - b. The information authorized by subdivisions a and b of subsection 9 of section 99-01-16-12 that the organization, at its discretion, is providing to all players. The information must be posted at a location so that each player has an equal opportunity to read the information.

- c. 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".
13. An organization shall maintain control and management of a device. A gaming employee or volunteer shall maintain custody of the key to access the interior of a device and may not provide a licensed alcoholic beverage establishment with any key to a device.
  14. An organization shall have theft, fire, and vandalism insurance coverage on a device.
  15. An organization may provide a licensed alcoholic beverage establishment with only a temporary loan of funds to enable the establishment to redeem the value of winning charitable gaming tickets that the organization projects will be redeemed by players during an interim period. The loan must be made by check and be interest free. The duration of the loan must be until the organization discontinues conducting charitable gaming tickets at the gaming site under the provisions of this chapter.
  16. An organization shall establish an interim period, which is the time interval between the scheduled times when a gaming employee or volunteer normally withdraws the currency from a device's currency collection and stacker box and reimburses an establishment for the value of redeemed winning charitable gaming tickets, as a period not exceeding seven calendar days.
  17. An organization may continue a game in play regardless if all of the game's top tier or consolation winning charitable gaming tickets have been redeemed.
  18. A gaming employee or volunteer shall add a new deal of charitable gaming tickets to a game by taking the unsold charitable gaming tickets of previous deals from half of the columns of charitable gaming tickets in the device and place those charitable gaming tickets on top of the unsold charitable gaming tickets of the other columns. Next, the gaming employee or volunteer shall place the new deal's charitable gaming tickets in the empty columns until full and then place the deal's remaining charitable gaming tickets in the other columns. Afterwards, the number of charitable gaming tickets in each column must be evened out by transferring charitable gaming tickets from column to column. No gaming employee or volunteer may add a partial deal to a game.
  19. When a game is being closed, a gaming employee or volunteer shall post a sign at a location that is clear and visible to

the players stating that the game is being sold out, discontinue posting the information authorized by subdivisions a and b of subsection 9 of section 99-01-16-12, and, if the game contains a deal with a last sale feature, post that deal's flare.

20. If a gaming employee or volunteer closes a game which contains a deal with last sale prize feature, the gaming employee or volunteer shall designate the last charitable gaming ticket of one of the columns of charitable gaming tickets as the "last sale" charitable gaming ticket. The designation must be made by stamping the charitable gaming ticket or attaching an imprinted sticker onto the game information side of the charitable gaming ticket with the phrase "Last Sale Prize Winning Charitable Gaming Ticket".
21. If an organization closes a game which has charitable gaming tickets remaining as unsold, the organization may not place these unsold charitable gaming tickets back into play.
22. When a deal is added to a game and when an organization closes the game, an accounting must be done of the winning charitable gaming tickets redeemed since the immediate previous deal was added to the game.
23. The amount reimbursed an establishment must equal the value of redeemed winning charitable gaming tickets that the establishment provides the organization in exchange for cash.
24. The results of a game must be reported on the gaming tax return for the quarter in which the game was closed.
25. The attorney general's standard recordkeeping system must be used unless written approval is obtained from the attorney general for use of an alternate recordkeeping system.
26. A gaming employee or volunteer may store no more than one unplayed deal of charitable gaming tickets in a storage area in the interior of a device.
27. No organization may provide a service technician with a duplicate key or a master key to access the interior of the organization's device.
28. A gaming employee or volunteer must be certified by a manufacturer's distributor or licensed distributor in the operation and service of a device.
29. An organization shall retain a restricted gaming employee's acknowledgment referenced by subsection 28 of section 99-01-16-12.

30. An organization shall maintain a list on the gaming site of all restricted gaming employees. The list must include the name, 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-14. Rental agreement.

1. An organization shall have in writing the conditions and responsibilities under which a licensed alcoholic beverage establishment (lessor) will provide limited assistance in the conduct of charitable gaming tickets through the use of an electronic-mechanical charitable gaming ticket dispensing device at a site which the organization is permitted to use and occupy. The agreement must be attested to by both the lessor and organization.
2. At a minimum, the agreement entered into pursuant to this section must contain, by affirmative or negative statement, the following information:

- a. Name of lessor.
- b. Signature of lessor or person who has the express responsibility and authority to execute a rental agreement for the site.

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

- c. Name of organization (lessee).
- d. Signature of the top official of the organization.
- e. 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, or any administrative rules adopted or formal directives issued by the attorney general or state gaming commission, the term of the agreement must end on the date of the inconsistency or the rental agreement must be modified to resolve the inconsistency.

- f. Monetary consideration, if any.
- g. Brief description of the specific area being leased within the facility where the electronic-mechanical charitable gaming ticket dispensing device will be placed.
- h. The inclusion of the following statements with appropriate selections made:
  - (1) "The lessor does hereby agree that only a restricted gaming employee of the lessor who has a temporary or permanent state work permit in accordance with section 99-01-07-01 will provide limited assistance in the conduct of charitable gaming tickets through the use of an electronic-mechanical charitable gaming ticket dispensing device."
  - (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 or, except as provided by sections 99-01-16-16 and 99-01-16-19, perform any of the organization's recordkeeping or audit functions. 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 or, except as provided by sections 99-01-16-16 and 99-01-16-19, perform any of the organization's recordkeeping or audit functions."
  - (3) "The lessor does hereby agree that a restricted gaming employee of the lessor will not, directly or indirectly, play charitable gaming tickets at the site leased while the restricted gaming employee is on duty. A restricted gaming employee taking a temporary break is still considered on duty. The lessor may allow a restricted gaming employee to play charitable gaming tickets while off duty at the site, but only after three hours of active play have occurred since the restricted gaming employee went off duty. If the lessor allows a restricted gaming employee to play charitable gaming tickets while off duty, the lessor hereby agrees to 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."
  - (4) "The lessor does hereby agree that, if the organization provides the lessor with a temporary loan of funds to redeem the value of winning charitable gaming tickets, the lessor will repay the

loan when the organization discontinues conducting charitable gaming tickets at the gaming site under the provisions of chapter 99-01-16 of the North Dakota Administrative Code."

(5) "The lessor does hereby agree that the lessor will comply with the provisions of North Dakota Administrative Code sections 12, 16, and 19 of chapter 99-01-16."

- i. A statement that the game of bingo is or is not the primary game of chance conducted on the site.
  - j. 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.
  - k. A statement that the game of paddlewheels, described by subsection 2 of section 99-01-15-01, is or is not conducted on the site. The number of paddlewheel tables, if any, upon which the monthly rent is based.
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. If the lessor pays for variable and seasonal expenses, the organization's fixed dollar rate per month must cover variable and seasonal expenses, such as snow removal, air-conditioning, and heating. Otherwise, the organization may pay the variable and seasonal expenses to the vendor.
- a. A graduated rate arrangement is prohibited.
  - b. Other remuneration, in lieu of money, is prohibited.
  - c. A percentage rate is 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 or paddlewheels (involving a playing table) is conducted, for purposes of enforcing the maximum monthly rent of two hundred dollars for each table on which the games of twenty-one and paddlewheels are 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 two twenty-one and paddlewheel tables set up and necessary for the playing of the games of twenty-one and paddlewheels at that site.

- (2) If the game of charitable gaming tickets is conducted through the use of an electronic-mechanical charitable gaming ticket dispensing device, the maximum monthly rent may not exceed:
    - (a) If the game of twenty-one or paddlewheels (involving a playing table) is conducted, in addition to the rent allowable for the game of twenty-one or paddlewheels, one hundred twenty-five dollars regardless of the number of electronic-mechanical charitable gaming ticket dispensing devices placed on the site.
    - (b) If the game of twenty-one or paddlewheels is not conducted, two hundred twenty-five dollars regardless of the number of electronic-mechanical charitable gaming ticket dispensing devices placed on the site.
  - (3) If the games of twenty-one or paddlewheels, or both, and charitable gaming tickets are conducted by a licensed organization at a special occasion for five days or less during a month and the temporary site is a public or private building, the maximum rent is thirty-five dollars for each twenty-one and paddlewheel table and twenty-five dollars for the charitable gaming ticket activity, per special occasion. If only the game of charitable gaming tickets is conducted under those circumstances, the maximum rent is fifty 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, paddlewheels, or charitable gaming tickets, or any combination, no additional rent is allowed. Otherwise, the rent amount for a poker occasion must be reasonable.
- f. No organization may pay any additional amount of rent or expense from any source directly to the lessor of the site for any other purpose, such as office space, storage space, snow removal, janitorial service, equipment, maintenance, signs, lighting, decorating, or any other item normally classified as a fixed asset, associated, directly or indirectly, with the conduct of charitable gaming tickets on the site or any other organization activity. Except for a leased gaming site at which bingo

is the primary game of chance, no organization may pay for any capital or leasehold improvements of a leased gaming site. However, an organization may pay a work permit fee of an establishment's restricted gaming employee.

- g. To other than a lessor of an 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 and the number of twenty-one or paddlewheel tables necessary changes 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 rental agreement. A copy of the amended 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-03.2, 53-06.1-03.3, 53-06.1-17

99-01-16-15. Access log form required. An organization shall maintain an access log in the interior of an electronic-mechanical charitable gaming ticket dispensing device. A person who accesses a device for withdrawing currency, adding a deal to a game, performing repair, inspection, or any other purpose shall record the time and date of entry and closure, the readings of the two nonresettable electronic or mechanical accounting meters, the specific area accessed, repaired, or inspected, and sign the log. However, if the person does a test vend of a charitable gaming ticket or a test validation of currency, the person shall also record the readings of the two nonresettable electronic or mechanical accounting meters before and after the test vend is completed. The attorney general shall prescribe the access log form. The organization shall retain the completed log form for at least one year from the date of the form's last entry. The log form for this one-year period must be retained in the interior of the device for inspection by the attorney general and local law enforcement officials.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-16-16. Record of the win. When a player wins a last sale prize feature, or a cash prize of more than one hundred dollars from the play of a commingled game of charitable gaming tickets, a restricted gaming employee of a licensed alcoholic beverage establishment shall make a record of the win. However, the attorney general may require any



or all licensed alcoholic beverage establishments 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 be a mechanically or electronically sequentially numbered receipt. The receipt must include at least the following information:

1. A restricted gaming employee shall legibly print, in ink, on the face of the receipt of at least the following:
  - a. Name of the gaming site.
  - b. Gaming stamp number.
  - c. Game serial number.
  - d. Name of the game.
  - e. Amount of the cash prize.
  - f. Date of the cash prize payout.
  - g. If the payee is personally known by the restricted gaming employee, 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 restricted gaming employee, 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 restricted gaming employee 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 restricted gaming employee 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 forms of identification. The restricted gaming employee 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 restricted gaming employee may not pay out any prize unless and until the payee has fully and accurately furnished to the restricted gaming employee 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 restricted gaming employee shall mail the cash prize to the payee.

- i. Legible signature of the restricted gaming employee who completed the record of the win.
2. After a record of the win is completed by the restricted gaming employee, the payee shall legibly sign and date, in ink, the record of the win to acknowledge the cash prize amount.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-16-17. Person prohibited from falsifying record of the win.

1. No restricted gaming employee of a licensed alcoholic beverage establishment or player may falsify any information of a record of the win. No restricted gaming employee may willfully or deliberately disregard the requirements of section 99-01-16-16 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 restricted gaming employee 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 this section. 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 a restricted gaming employee determines that a player has falsified, attempted to falsify, or conspired with another person to falsify the record of the win, the restricted gaming employee shall deny the player the cash prize and notify the attorney general or a local law enforcement agency.
3. An organization or establishment 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-16-18. Reconciliation of inventory control records.

1. The organization shall, on at least a quarterly basis, reconcile (compare) its inventory control records (see subsection 3 of section 99-01-16-20) of deals of charitable gaming tickets that are recorded as being in play and in inventory to deals that are actually in play and in inventory. A gaming employee or volunteer shall physically count the actual deals in play and in inventory, compare this count to the inventory control records, and resolve any difference. The physical count must be performed by a person other than the person who is primarily responsible for safeguarding the physical inventory of the deals.
2. A gaming employee or volunteer 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-16-19. Recordkeeping system required - Licensed alcoholic beverage establishment. The recordkeeping system must include at least the following items which must be maintained in the state of North Dakota for one year from the end of the quarter in which the charitable gaming ticket activity occurred unless the licensed alcoholic beverage establishment is released by the attorney general from this requirement:

1. Records documenting the daily number and value of redeemed winning charitable gaming tickets, by denomination.
2. A credit redemption slip documenting a credit due a player because of a malfunction of a device, including at least the following:
  - a. Name of organization.
  - b. Name of gaming site.
  - c. Date of malfunction.

- d. Serial number of the device.
- e. Model number of the device.
- f. Reason for the malfunction, if known.
- g. Amount of credit due the player.
- h. Name, address, state, and driver's license number of the player.
- i. The player's legible signature and date attesting to the validity of the information.
- j. Name of restricted gaming employee who prepared the slip.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-16-20. Recordkeeping system required - Licensed organization.

1. An organization shall retain the interim period accounting records of a commingled game of charitable gaming tickets for three years from the end of the quarter in which the charitable gaming ticket 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 commingled game:
  - a. The flares, with the state gaming stamps affixed, together with all redeemed winning charitable gaming tickets and all unopened and unsold charitable gaming tickets. The redeemed winning and the unsold charitable gaming tickets are not required to be segregated by game serial number. The organization may not open any unsold or defective charitable gaming tickets. The records referenced by this subdivision must be retained by the organization for one year from the end of the quarter in which the 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.
  - b. For redeemed winning 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 capability

to timely locate retained charitable gaming tickets upon request by the attorney general and law enforcement officials.

- c. Record of the win.
  - d. Records documenting the activity of each interim period, including:
    - (1) The date each deal was placed in a device.
    - (2) Number and value of redeemed winning charitable gaming tickets, by denomination, reimbursed for cash, currency in a device, actual cash profit, and bank deposit. The actual cash profit is computed as the currency in a device less the total value of charitable gaming tickets reimbursed for cash.
    - (3) Reconciliation of the activity through the readings of the resettable and nonresettable meters. This reconciliation must also be done on a quarter-to-date basis. At the end of a quarter, the readings of the meters and the reconciliation must be performed by a person other than the person who normally recorded the meter readings for the interim periods of the quarter.
    - (4) Control log between a licensed alcoholic beverage establishment and an organization that documents an agreement of the following information:
      - (a) Number and value of redeemed winning charitable gaming tickets, by denomination.
      - (b) Number of unredeemd top tier winning charitable gaming tickets, by denomination, to be posted in accord with subdivisions a and b of subsection 9 of section 99-01-16-12.
      - (c) Number of credit redemption slip forms issued to a licensed alcoholic beverage establishment, completed and returned to the organization, and unused and returned to the organization.
      - (d) Number of record of win forms issued to a licensed alcoholic beverage establishment, completed and returned to the organization, and unused and returned to the organization.
3. Inventory control records must include at least the name of the deal, 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 deal, by gaming stamp number and game serial number. Unless an organization has only one site which is the location of the organization's home office, the organization shall maintain inventory control records for each site and the records must include, for each deal, at least the name of game, dates received from and returned to the home office, by gaming stamp number and game serial number.

4. A summary of ideal gross proceeds, value of unsold tickets, actual gross proceeds, prizes, adjusted gross proceeds, actual cash profit, cash long or short, and bank deposit. The summaries of all commingled games conducted during a quarter must reconcile to the commingled game activity reported on the North Dakota gaming tax return.
5. All daily activity records must be completed by use of a nonerasable ink pen and be legibly signed with at least the person's last name and dated by the person completing the record. The activity records do not need to be available at the site.
6. 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 accounting for the interim period of activity while the game was in play, 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-16-21. Actual cash profit bank deposit required by licensed organizations. For a commingled game of charitable gaming tickets, the actual cash profit for an interim period of gaming activity must be deposited, intact, in the organization's general gaming bank account no later than the fifth banking day following the last day of the interim period. If the organization prepares a deposit slip for the deposit of actual cash profit from only one commingled game's interim period of activity, the validated bank deposit slip or receipt must contain a reference to the name of the commingled game, date range of the interim period of gaming activity, deposit amount, and must be included as part of the daily accounting records of that commingled game. If the organization prepares one deposit slip for the deposit of actual cash profit from more than one 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 99-01-08-17 (bingo), 99-01-09-13 (raffles), 99-01-10-14

(charitable gaming tickets and punchboards), 99-01-11-07 (professional sports pools), 99-01-12-30 (twenty-one), 99-01-13-24 (poker), 99-01-14-06 (calcuttas), and 99-01-15-28 (paddlewheels). 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 April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-17

CHAPTER 99-01-17  
 GAMING TAX AND TAX RETURNS

Section	
99-01-17-01	Due Date for Filing Tax Returns
99-01-17-02	Incomplete Tax Returns
99-01-17-03	Consolidated Return
99-01-17-04	Extension for Good Cause
99-01-17-05	Attorney General To Determine Accuracy of Return

99-01-17-01. Due date for filing tax returns.

1. A North Dakota gaming tax return and payment of the tax due must be postmarked, or if hand-delivered, received in the attorney general's office by the last business day of the month following the end of a quarter year. Business days are defined as Monday through Friday not including state holidays.
2. Quarters 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 April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-12, 53-06.1-17

99-01-17-02. 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 North Dakota gaming tax return. A tax return including accompanying schedules will 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.
  - d. Failure to remit the correct amount of taxes imposed by North Dakota Century Code sections 53-06.1-12 and 53-06.1-12.2.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-17-03. Consolidated return.

1. Only one tax return per quarter must be filed by a licensed organization.
2. Operations of an auxiliary, holding company, or other closely connected organization as defined in section 99-01-04-04 are subject to the supervision of the governing board of the licensed organization and the reporting by that organization.
3. An organization with more than one gaming site shall file an accounting record of each site's gaming activity.
4. An organization shall file a quarterly record of state gaming stamp activity with the tax return.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-12, 53-06.1-17

99-01-17-04. Extension for good cause. An extension 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 net proceeds.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-12, 53-06.1-17

99-01-17-05. 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, and distribution of net proceeds; to determine the current gaming tax and excise tax liabilities; and to prepare necessary returns.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-12, 53-06.1-17

#### CHAPTER 99-01-18 ELIGIBLE USES

##### Section

99-01-18-01	Licensed Organization Not to Receive Special Consideration From Donees
99-01-18-02	General Guidelines for Eligible Uses

99-01-18-01. Licensed organization not to receive special consideration from donees.

1. An organization 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 those net proceeds are devoted, nor may the organization devote funds to a recipient on the condition that the 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 recipient or potential 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 the licensed organization or potential licensed organization.
3. An 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 that

contribution is deemed a contribution of property by the donor organization and not a devotion of net proceeds. A contribution of property encumbered by liens, chattels, mortgages, or any other forms of indebtedness is considered a sale of property.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-18-02. General guidelines for eligible uses. For the purpose of administering subsection 8 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. A contribution must be a current irrevocable remittance not contingent upon future occurrences, and specific as to recipient and use.
2. After an organization has made a contribution, the organization may not interfere with the recipients' control and management of the contribution. No organization may interfere, attempt to retain ownership, or influence the use of or disposition of any tangible personal property or real property purchased by or for an eligible use recipient.
3. The intended use must be broad in scope and affect an indefinite number of people, except for recipients of educational scholarships and those individuals as permitted under subdivisions i and j of subsection 8 of North Dakota Century Code section 53-06.1-01.
4. 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.
5. A use of funds for the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property owned by an organization is an eligible use only if the organization agrees that, upon abandoning the exclusive use of the property which is stated in subsection 8 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 8 of North Dakota Century Code section 53-06.1-01. However, if an organization sells the property, the net proceeds from the sale must be placed in the charitable gaming trust fund bank account, disbursed to an eligible use, or reinvested in like property within one year. The 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 referenced in this subsection.

6. In applying subsection 8 of North Dakota Century Code section 53-06.1-01, the devotion of net proceeds for eligible uses must go directly from the charitable gaming trust fund bank account or from the supplemental bank account of a class A organization 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, directly or indirectly, associated with gaming. For example, fundraising activity at the organization's gaming site and the purchase of capital cost equipment and consumable products associated with a concession or cafe located at a gaming site where bingo is conducted are prohibited.
8. If an organization disburses net proceeds to support any fundraising activity that is not directly associated with program activity, 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. However, net proceeds may not be disbursed to support any fundraising activity unless the net income of the fundraising activity exceeds the total fundraising expenses.
9. In applying subdivision c of subsection 8 of North Dakota Century Code section 53-06.1-01, eligible uses of net proceeds include:
  - a. A disbursement for a scholarship for a student. A scholarship may be based on scholastic achievement, talent, intended course of study, special handicap, or race. A scholarship award to a student may not be decided by, controlled, or managed by a donor organization. However, a class B organization which is involved in an education program for special students, including students inflicted with disease, may administer an organization-sponsored scholarship program. Net proceeds may be disbursed to a scholarship board or to an educational institution which shall consider the qualifications of all the scholarship applicants and select the best applicant based on defined criteria. Members of the scholarship board must be independent of the donor organization. A disbursement for a scholarship must be payable to an educational institution and a recipient, scholarship board and a recipient, or payable only to the educational institution or scholarship board.

A student receiving a scholarship may attend an educational institution located within or outside the state of North Dakota. The student may apply the scholarship at a nonprofit public, or for profit or nonprofit private educational institution registered with or accredited by any state. A scholarship may be applied toward housing, books, tuition, and meals, provided the expense relates directly to the student's educational need. A scholarship may be awarded through a youth or teen pageant, contest, or tournament. However, youth and teen pageant administrative and operating expenses do not qualify as an eligible use. A scholarship may not be based on a selection process which includes criteria of a person's physical appearance. No organization may disburse net proceeds directly to the organization's member or member's child. However, the organization's member or member's child may apply for a scholarship through the scholarship board or educational institution.

- b. A disbursement for supplemental assistance to a nonprofit public, or for profit or nonprofit private educational institution registered with or accredited by any state. A primary, secondary, and post secondary educational institution qualifies as a recipient, including affiliated alumni associations, booster clubs, parent-teacher councils, and college sororities and fraternities. Net proceeds may be used for youth activities, playground equipment, extracurricular activities, sporting events, maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, and supplies.
- c. A disbursement to a library for maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, supplies, program services, special events, promotions, educational material, collection of books, computer systems, information services, exhibits, story hours, film showings, and discussion groups. A disbursement to a museum may be for maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, and assembly of exhibits for preservation, collection, education, and interpretation.
- d. A disbursement to assist nonprofit performing arts and humanities organizations. Net proceeds may be disbursed for studio rental, auditorium rental, speaker fees, equipment, travel, administrative and operating expenses, and uniforms. Functions may include children's theater, summer camps, and developing art parks.
- e. A disbursement to preserve cultural heritage. Net proceeds may be disbursed toward the restoration, reconstruction, improvement, or preservation of buildings in the state of North Dakota which are listed in the state

historic sites registry or the national registry of historic places. Net proceeds may be disbursed toward programs of nonprofit organizations that provide important historical information or tell a story about a local region, the state of North Dakota, or the nation and which primarily educate and inspire the public, elderly, handicapped, schoolchildren, teachers, and foreign visitors. Qualifying programs include the lifestyles and human experiences of homesteaders, immigrants, the Indian culture, military era, and fur trade. Net proceeds may be disbursed for interpretive programming consisting of exhibits, publications, simulations of life, classroom outreach services, audiovisual presentations, special events, and tours. Special events such as chautauquas and community celebrations of Norskfest, threshing bees, and Octoberfest qualify for related expenses of parades, displays, equipment, educational materials, and awards. Expenses related to a school reunion do not qualify.

- f. A disbursement to youth community and athletic activities provided that the activities are open to all youth, less than eighteen years of age, regardless of gender. An organization shall disburse, to the extent possible, equal amounts of net proceeds to activities for each gender. Net proceeds may be disbursed for uniforms, equipment, tournament fees, transportation, coaches' salaries, and speaker fees for father-son and mother-daughter banquets provided that the meals for these banquets are provided free or at actual cost to the participants. Business sponsored appreciation luncheons and banquets for certain groups of people do not qualify.
- g. A disbursement for adult athletic activities including softball, rodeo clubs, curling clubs, bowling teams, shooting clubs, riding clubs, and horse clubs. Net proceeds may be disbursed for sponsorship fees, uniforms, umpire fees, fees for the use of a sports complex, maintenance of a sports complex, and team equipment. However, the uniforms and team equipment must be owned by the team or league association and ownership may not be conveyed to individual members of the team. Tournament fees, food and drink, and private or public transportation expenses do not qualify except for disabled players.
- h. A disbursement for maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification impiety, worship, or religious observances. Net proceeds may be disbursed for maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, uniforms for a choir, furnishings, and supplies for church groups and services.

- i. A disbursement for scientific research for a cure to relieve human beings of disease and suffering.
10. In applying subdivision d of subsection 8 of North Dakota Century Code section 53-06.1-01, eligible uses are restricted to uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint. Such uses include:
- a. A disbursement for relief to an individual or family suffering from poverty or homelessness. Net proceeds may be disbursed for food, temporary housing, clothing, utilities, fuel for private transportation, and public transportation.
  - b. A disbursement to encourage and enhance the active participation of the elderly in our society.
  - c. A disbursement for services for the abused. Net proceeds may be disbursed to:
    - (1) Provide emotional support, guidance, and counseling to victims of crimes of rape and sexual assault.
    - (2) Encourage, assist, and support victims of rape and sexual assault in the judicial prosecution of perpetrators.
    - (3) Establish educational programs aimed at the public about rape, sexual assault and incest, the dramatic effects it has on victims and their families, and the cost to society resulting from these crimes.
    - (4) Increase community awareness of the seriousness and pervasiveness of domestic violence.
    - (5) Establish and direct services for abused spouses and their children as part of an ongoing human service program in the community, including advocacy, emergency shelter and food, information services, referrals, and peer support.
    - (6) Conduct fundraising activities, set policy, and coordinate programs to encourage and assist development of a strong volunteer advocate network.
  - d. A disbursement for services to persons with an addicted behavior toward alcohol, gambling, or drugs.
  - e. A disbursement to combat juvenile delinquency and rehabilitation of ex-offenders, including support for youth centers and halfway houses.

- f. A disbursement for the sick, diseased, and terminally ill and their physical well-being.
  - g. A disbursement for emergency relief and volunteer services. Net proceeds may not be disbursed to benefit individuals or groups of people who donate their time to community services, nursing homes, or hospitals.
  - h. A disbursement to nonprofit public or nonprofit private nursing homes and other nonprofit medical facilities. Net proceeds may be disbursed for maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, supplies, reading programs, and craft activities for patients.
  - i. A disbursement for social services and educational programs that aid the emotionally and physically distressed, handicapped, underprivileged, and elderly. Net proceeds must be disbursed directly to the program sponsor.
11. In applying subdivision e of subsection 8 of North Dakota Century Code section 53-06.1-01, eligible uses are restricted to uses and priorities enumerated in subdivisions c through l of subsection 8 of North Dakota Century Code section 53-06.1-01, specified by an organization's constitution, charter, or bylaws not of direct benefit to the eligible organization. Such uses include:
- a. A disbursement to an organization's member provided that the member qualifies under this section.
  - b. A disbursement to perpetuate the memory and history of the dead. Net proceeds may be disbursed to promote the general welfare by engaging in cultural, educational, charitable, and welfare activities sponsored by a fraternal organization. Qualifying expenses may relate to fraternal bands, choirs, color guards, and honor guards for uniforms, sheet music, and instruments for performances at concerts, homecomings, open houses, parades, festivals, and special events. However, the instruments must be owned by the fraternal organization and ownership may not be conveyed to individual members. Private and public transportation, state and national convention expenses, recognition nights which may include a banquet, program and dance for past commanders or past members, ceremonial activities, and ritual activities do not qualify.
  - c. A disbursement for burial expenses provided that a fraternal organization does not discriminate between members and nonmembers of the organization.

12. In applying subdivision f of subsection 8 of North Dakota Century Code section 53-06.1-01, eligible uses are restricted to uses that increase the comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof. Net proceeds may be disbursed to aid in teaching the principles of liberty, truth, justice, and equality. Beauty pageants do not qualify.
13. In applying subdivision g of subsection 8 of North Dakota Century Code section 53-06.1-01, eligible uses are restricted to uses for erecting or maintaining public buildings or works, public utilities, or public waterworks.
14. In applying subdivision h of subsection 8 of North Dakota Century Code section 53-06.1-01, eligible uses are restricted to uses that lessen the burden of government. Net proceeds may be disbursed to any entity that is normally funded by a city, county, state, or United States government and directly to a city, county, state, or the United States government or any agency, political subdivision, or instrumentality thereof.
15. In applying subdivision i of subsection 8 of North Dakota Century Code section 53-06.1-01, eligible uses are restricted to uses that benefit a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the losses are uncompensated by insurance. An accumulation for a future occurrence does not qualify.
16. In applying subdivision j of subsection 8 of North Dakota Century Code section 53-06.1-01, eligible uses are restricted to uses that benefit a definite number of persons who are suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is uncompensated by insurance. Net proceeds may be disbursed for subsistence for a family member traveling with an ill family member to an out-of-town medical facility. An accumulation for a future occurrence does not qualify.
17. In applying subdivision k of subsection 8 of North Dakota Century Code section 53-06.1-01, eligible uses are restricted to community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies as a community service project if it promotes the common good, enhances the social welfare of the community, and benefits an indefinite number of persons. The specific goals of a community service project may be to develop or promote public services in areas such as education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, and health. A use that directly benefits a chamber of commerce does not qualify.



18. In applying subdivision 1 of subsection 8 of North Dakota Century Code section 53-06.1-01, eligible uses are restricted to uses that are for or benefit efforts in support of the health, comfort, or well-being of the community. Such uses include:
- a. A disbursement to adult bands and choirs, including drum and bugle corps, city bands and choirs, and parade expenses. Net proceeds may be disbursed for uniforms, sheet music, and instruments. However, the instruments must be owned by the band or choir and ownership may not be conveyed to individual members. Private and public transportation expenses do not qualify.
  - b. A disbursement to educational related agricultural trade shows conducted in this state. However, meals and entertainment do not qualify.
  - c. A disbursement to nonprofit organizations supporting the protection of animals and wildlife. Net proceeds may be disbursed to:
    - (1) Hatcheries, wildlife preserves, and wildlife sanctuaries.
    - (2) Teach and promote sound principles of ecology with emphasis on human beings and their relationship to all living things.
    - (3) Teach and promote game and other wildlife management based on scientific principles.
    - (4) Teach and promote the benefits of outdoor pursuits including contact with animals, fish, and birds.
    - (5) Spay and neuter assistance programs, pet placement, lost and found pet services, educational programs, investigations of reported animal abuse, and animal information services.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-01, 53-06.1-11, 53-06.1-17

CHAPTER 99-01-19  
AUDIT, VIOLATIONS, AND INVESTIGATIONS

Section

99-01-19-01

Ineligible Use of Net Proceeds by Donee

99-01-19-02

Records Subject to Audit

99-01-19-03

Inspection of Premises and Records

99-01-19-04 Denial, Suspension, or Revocation of Licenses  
 99-01-19-05 Imposition of Monetary Fine  
 99-01-19-06 Monetary Fine Citation Form  
 99-01-19-07 Monetary Fine Appeal Procedures  
 99-01-19-08 Investigative Powers of the Attorney General  
 99-01-19-09 Investigative Hearings  
 99-01-19-10 Background Investigation Required of a  
 Manufacturer and Manufacturer's Distributor  
 of Electronic-Mechanical Charitable Gaming  
 Ticket Dispensing Devices, Manufacturer of  
 Paddlewheel Game Equipment, Manufacturer of  
 Charitable Gaming Tickets, and Manufacturer  
 of Paper Bingo Cards  
 99-01-19-11 Return of License Revoked

99-01-19-01. 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. A person or organization receiving gaming proceeds from an eligible organization for a permissible use, and subsequently using 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 8 of North Dakota Century Code section 53-06.1-01.

History: Effective April 1, 1992.  
 General Authority: NDCC 53-06.1-17  
 Law Implemented: NDCC 53-06.1-13, 53-06.1-17

99-01-19-02. Records subject to audit.

1. 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. If the attorney general conducts an audit, the organization, distributor, or manufacturer shall immediately provide all such records to the attorney general, provide a place, including a work station, where 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-13, 53-06.1-17

99-01-19-03. 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. When 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 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-19-04. Denial, suspension, or revocation of licenses. The attorney general may deny a license to any applicant or suspend or revoke any work permit or license of an organization, distributor, or manufacturer, and the state gaming commission may suspend or revoke a distributor's or manufacturer's license when that organization, distributor, or manufacturer:

1. Has violated, failed, or refused to comply with any provision, requirement, condition, limitation, or duty imposed by North Dakota Century Code chapter 53-06.1 and any amendment thereto, or any rule adopted by the state gaming commission or formal directive issued by the attorney general pursuant thereto, or any other law of this state.
2. Knowingly allows, causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of this article.
3. Has falsified any information on a license application or obtained a license by fraud, trick, misrepresentation, concealment, or through inadvertence or mistake or has falsified any information on a form or report filed with or otherwise provided the attorney general.
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, including providing any information requested verbally or in writing by the attorney general and within the time set by the attorney general.
5. Fails to display its license and state authorization 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 the attorney general any information requested under the administrative rules, law, or formal directives issued by the attorney general within the time required 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, within fourteen days after receiving a written request 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. The attorney general and state gaming commission may not both suspend or revoke a distributor's or manufacturer's license for the same violation of any provision of North Dakota Century Code chapter 53-06.1 or violation of any rule of this article.

History: Effective April 1, 1992.

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

99-01-19-05. Imposition of monetary fine.

1. The attorney general or state gaming commission 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. A 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. In determining the amount of the monetary fine to be imposed for a violation of law or rule, the attorney general or state gaming commission 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 the integrity of lawful gaming.
  - e. The monetary fine imposed for similar violations.
  - f. Any other factor related to the violation that is considered important.
3. The attorney general and state gaming commission may not both impose a monetary fine on a licensed organization, distributor, or manufacturer for the same violation of any provision of North Dakota Century Code chapter 53-06.1 or violation of any rule of this article.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-19-06. Monetary fine citation form. The attorney general or state gaming commission 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 or state gaming commission. The amount of the monetary fine must be determined in accordance with the factors listed in subsection 2 of section 99-01-19-05. 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 or state gaming commission unless the organization, distributor, or manufacturer appeals the citation and the monetary fine to the attorney general or state gaming commission within the twenty-one-day period.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-19-07. 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. To request a hearing, an appeal of a monetary fine must be sent to the attorney general or state gaming commission, whichever imposed the monetary fine. 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 or state gaming commission, whichever imposed the monetary fine, 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-19-08. 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 rules of this article, 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 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 and general financial record, book, document, account, or paper material to 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-19-09. Investigative hearings. To accomplish the objectives and to carry out the duties prescribed by North Dakota Century Code chapter 53-06.1, and the rules of this article, the

attorney general, in addition to other powers conferred upon the attorney general by North Dakota Century Code chapter 53-06.1, and the provisions of these rules, may issue subpoenas to any person, administer an oath or affirmation to any person, and conduct hearings in aid of any investigation or inquiry.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-19-10. Background investigation required of a manufacturer and manufacturer's distributor of electronic-mechanical charitable gaming ticket dispensing devices, manufacturer of paddlewheel game equipment, manufacturer of charitable gaming tickets, and manufacturer of paper bingo cards.

1. No manufacturer or manufacturer's distributor of electronic-mechanical charitable gaming ticket dispensing devices, manufacturer of paddlewheel game equipment, manufacturer of charitable gaming tickets, and manufacturer of paper bingo cards may sell or otherwise provide gaming equipment to a licensed distributor unless the manufacturer or manufacturer's distributor, or both, have first undergone a background investigation and been approved by the attorney general. This includes each partner of a partnership, and each stockholder owning ten percent or more of the outstanding voting common stock of a corporation, including the corporation's parent or subsidiary corporations, if any. The attorney general may contract for the background investigation.
2. A manufacturer and manufacturer's distributor of electronic-mechanical charitable gaming ticket dispensing devices, manufacturer of paddlewheel game equipment, manufacturer of charitable gaming tickets, and manufacturer of paper bingo cards shall provide all information, documentation, assurances, consents, waivers, or other material requested by the attorney general.
3. The attorney general may require a manufacturer and manufacturer's distributor of electronic-mechanical charitable gaming ticket dispensing devices, manufacturer of paddlewheel game equipment, manufacturer of charitable gaming tickets, and manufacturer of paper bingo cards to pay the actual cost of a background investigation when adequate background information sources are not readily available. The attorney general may require payment of the estimated cost in advance of conducting the investigation. The attorney general shall notify the manufacturer or manufacturer's distributor, or both, as soon as possible that advance payment of the estimated cost is necessary and shall also, during the investigation, notify the manufacturer or manufacturer's distributor, or both, of any



additional estimated cost. In lieu of paying the additional estimated cost, the manufacturer or manufacturer's distributor, or both, may withdraw from being considered for approval by the attorney general. The estimated cost remitted must be deposited in the attorney general's refund fund to defray the actual cost of the background investigation. After conclusion of the background investigation, the attorney general shall refund any overpayment or assess and collect an amount sufficient to reimburse the attorney general for any underpayment of the actual cost.

4. If a manufacturer or manufacturer's distributor of electronic-mechanical charitable gaming ticket dispensing devices, manufacturer of paddlewheel game equipment, manufacturer of charitable gaming tickets, and manufacturer of paper bingo cards is not approved by the attorney general, the attorney general shall notify the manufacturer or manufacturer's distributor, or both.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-19-11. Return of license revoked. Upon revocation of any license issued by the attorney general, the organization, distributor, or manufacturer shall immediately return the license and site authorization to the attorney general.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

## CHAPTER 99-01-20 DISTRIBUTORS

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99-01-20-01. License required.

1. No person may sell, offer for sale, or otherwise provide gaming equipment to licensed organizations, organizations which have been issued a local permit, gaming schools or any other person for use in connection with games of chance or nongaming activity in or outside this state without first obtaining a distributor license from the attorney general.
2. A license may not be transferred to any other person.
3. A distributor's license must be prominently displayed in a conspicuous location at the distributor's business office so that the license may be observed by customers.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

99-01-20-02. License application information. Annual application must be made for a distributor'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 information as the attorney general requires, including the following:

1. List of all employees, agents, owners, stockholders, partners, officers, directors, and other persons engaged in the business of the distributor. A "distributor personnel supplemental" must be completed for each of these persons.
2. If the business is a corporation, for each stockholder the number of shares and the respective percentage of total shares issued that are owned, by all classes of stock of the corporation. If the business is a partnership, for each partner the percentage of equity interest in the partnership.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

99-01-20-03. License fee and reapplication date.

1. The annual distributor license fee is one thousand five hundred dollars.
2. A distributor license must be reapplied for on April first of each year. There may be no proration of the license fee.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

99-01-20-04. Personal information form. The "personal information" form must include information prescribed by the attorney general for a proprietor, officer, and shareholder of five percent or more of outstanding common stock of a distributorship.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-05. 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 that person have any financial interest whatsoever in 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 that person have any financial interest whatsoever in that distributorship.
4. No distributor or person having a financial interest in a distributorship may be a lessor of a gaming site, directly or indirectly, to 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 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.
7. A manufacturer's distributor of an electronic-mechanical charitable gaming ticket dispensing device may be a licensed distributor.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-20-06. Changes in ownership-personnel. Additions or deletions of any employees, agents, or other personnel engaged in the business of the distributor or any change in the management, directorship, or equity ownership of the distributorship must be reported monthly to the attorney general on forms supplied by the attorney general.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-20-07. Restrictions of distributor employee.

1. No employee of a distributorship may be a gaming employee, consultant, or volunteer of an organization unless 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. No employee or agent of a distributorship may play a game of charitable gaming tickets or punchboard at any licensed gaming site in North Dakota.
4. No employee of a distributor, whether acting as an employee or independent contractor, may provide bookkeeping services to an organization.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-08. No division of territories allowed. No distributor may enter into any agreement, expressed or implied, with any other distributor that restricts either of them in the operation and carrying on of business to a specific geographic area, particular organization, and such a restriction may not be a condition of any sales between a distributor and any other distributor.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-09. Required orientation for licensed distributor. A distributor 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-10. 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-11. Inventory control.

1. A distributor shall establish and maintain a quantity based perpetual inventory control system to at least account for deals of charitable gaming tickets, club specials, and tip boards that are purchased or otherwise received from a vendor - an affiliated company, North Dakota licensed distributor, North Dakota licensed manufacturer, or from any other source including gaming equipment returned to the distributor as a credit. The system must account for the sale or other disposition of each deal to the ultimate purchaser, including North Dakota licensed distributors, North Dakota licensed organizations, organizations that have been issued a local permit, organizations which conduct games of chance on tribal land, gaming schools, Indian tribes, United States military bases, and out-of-state purchasers.
2. Perpetual inventory control records must separately account for the quantity of deals of charitable gaming tickets, club specials, and tip boards acquired, sold, and remaining in present inventory, by at least the following information:
  - a. Name of manufacturer or other distributor.
  - b. Manufacturer's or other distributor's sales invoice number and date.
  - c. Name of game.
  - d. Manufacturer's form number (excluding deals of jar tickets).
  - e. Distributor's sales invoice number and date. This information must be recorded when the game is sold.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-12. Special purchases restrictions.

1. A distributor may not purchase or be provided any deal of charitable gaming tickets, club special, tip board, seal 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.
  - 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. An affiliated company must be a wholly owned subsidiary or the parent company of the North Dakota licensed distributor.
  - b. An 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. Purchased gaming equipment must be properly accounted for as required by section 99-01-20-29.
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. An 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-13. Special sales restrictions.

1. 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:
  - a. Which does not conform to the requirements of sections 99-01-21-07 and 99-01-21-08 related to the minimum quality standards for the manufacture of games of charitable gaming tickets and paper-type punchboards.
  - b. Which has the manufacturer's or distributor's seal broken on the manufacturer's games' package, box, bag, or other container (see subsection 4 of section 99-01-20-23).
  - c. Which contains tickets or punches that have winner protection features although the tickets or punches of that game are not winning tickets or punches.
  - d. Which has been prohibited by the attorney general from sale or play within this state.
  - e. For a club special and tip board, which has an ideal gross proceeds exceeding two hundred dollars.
2. No distributor may temporarily store at the distributor's warehouse or home office any game that has a state gaming stamp affixed to the game's flare which has been sold to a licensed distributor, licensed organization, organization which has been issued a local permit, or gaming school. A sales transaction occurs when a distributor issues a sales invoice to evidence the sales transaction.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-14. Special sales and rent restrictions -  
Electronic-mechanical charitable gaming ticket dispensing device.

1. A distributor may not sell or otherwise provide to any licensed organization any electronic-mechanical charitable gaming ticket dispensing device for the dispensing of charitable gaming tickets unless the device meets all of the manufacturing specifications of section 99-01-16-02.
2. A distributor may not rent to any licensed organization any 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.

3. The phrase "Every eligible organization shall acquire all raffle tickets or equipment for games of chance from a distributor licensed under this chapter" of subsection 3 of North Dakota Century Code section 53-06.1-14 allows a licensed distributor, as an intermediary, to arrange for an organization to acquire a device from a manufacturer's distributor or manufacturer through a financing lease purchase agreement with a finance company or lease company. Although the organization is deemed to own the device, the finance company or lease company may retain a security interest or ownership rights, or both, in the device until the organization satisfies the requirements of the lease.
4. A distributor that resells a device to another organization shall first have a manufacturer's distributor change the keyed lock on the device's exterior door.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-15. Special sales and rent restrictions - Electronic punchboards.

1. A distributor may not sell or otherwise provide to any licensed organization any electronic punchboard that does not conform to requirements of this state's laws and rules, including formal directives of the attorney general. An electronic punchboard sold or otherwise provided must:
  - a. Be constructed with a low battery light and printer trouble light.
  - b. Be constructed to have a paper advance button, game accounting button, and game serial number set button.
  - c. Be constructed to have at least a consecutive four-digit game count number which does not return to zero at the conclusion of any period of use. Further, any electronic punchboard used must retain its transaction count between uses whether or not its power source is interrupted.
  - d. Be constructed to randomly precompute and assign winning positions on a keyboard.
  - e. Be constructed to enable the jar operator to set the game serial number.

- f. Be constructed to use a consumable and replaceable punchcard that contains a certain number of punchable holes and a sheet of paper that covers the backside of the holes. This sheet of paper must be of a special color or design so as to prevent to the greatest extent possible its counterfeit reproduction and it must be permanently affixed to the backside of the punchcard.
  - g. Be constructed to print tickets containing at least the following information:
    - (1) For winning tickets:
      - (a) Win designation.
      - (b) Consecutive game number.
      - (c) Game serial number.
      - (d) Customized security code.
    - (2) For nonwinning tickets: number of unplayed holes.
  - h. Be constructed to print a full accounting of the result of the play of each punchcard.
2. A distributor may not rent to any licensed organization any electronic punchboard 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-16. Special sales restrictions - Twenty-one and paddlewheel drop box. No distributor may sell or otherwise provide to any licensed organization any twenty-one or paddlewheel 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. One lock that secures the drop box to a twenty-one or paddlewheel 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.
- 2. 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.

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 or paddlewheel 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-17. Special manufacture and sales restrictions - Twenty-one and paddlewheel chips. Except for the same organization, no manufacturer or distributor of twenty-one or paddlewheel chips may manufacture, distribute, or otherwise provide chips usable in the game twenty-one or paddlewheels 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-18. Special sales restriction - Paddlewheels. Except for the application of subsection 1 of section 99-01-15-01, no distributor may sell or otherwise distribute a paddlewheel, paddlewheel table, or a series of paddlewheel ticket cards as a variation of the game paddlewheels described by subsection 2 of section 99-01-15-01 unless the distributor files a written proposal to the attorney general and receives written authorization from the attorney general to sell or otherwise distribute the variation of the game. The proposal must comprehensively describe the proposed variation in relation to sections 99-01-15-02, 99-01-15-03, 99-01-15-17, 99-01-15-18, 99-01-15-20, and 99-01-15-27.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-19. 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, club special, or tip 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-20. Gifts from a distributor restricted. A distributor may not, directly or indirectly, give a gift, trip, prize, or other such gratuity valued singly or in aggregate in excess of one hundred dollars per person per calendar year related to a licensed organization, organization which has been issued a local permit, another distributor, manufacturer, or their employees. A distributor may not, directly or indirectly, give a loan of money (excluding credit) to a licensed organization, organization which has been issued a local permit, another distributor, manufacturer, or their employees.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-21. Prices charged by a distributor 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-22. Distributor sales to other licensed distributors, licensed organizations, organizations which have been issued a local permit, gaming schools, and other persons authorized by the attorney general. With the exception of section 99-01-20-24, 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 a local governing body to conduct only bingo, raffles, or sports-pool boards in accordance with this article, a gaming school which has not first been licensed by the attorney general, or other persons unless the distributor has been authorized by the attorney general. The distributor is responsible for determining whether an organization is a licensed organization, an organization which has been issued a local permit, or a gaming school is a licensed gaming school.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17

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

99-01-20-23. Marking and identification of equipment for games of chance.

1. A manufacturer's game serial number must appear on all paddlewheel tickets, charitable gaming tickets, seal boards, punchboards, sports-pool boards, and calcutta boards. The name of an organization, organization post or lodge number, or other information may appear on 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. If a manufacturer's game serial number is not preprinted on a seal board, sports-pool board, or calcutta board, a distributor shall assign and imprint a game serial number on the board.
2. Consecutively numbered state gaming stamps must be purchased at a price of twenty-five cents each by each distributor 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.
3. For a charitable gaming ticket (two-ply card with perforated break-open tabs) game and a specialty jar ticket game, a 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.
4. 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.

5. A 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 paddlewheel 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 99-01-20-24.
6. A 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 paddlewheel ticket cards must be the game serial number of the lowest numbered paddlewheel ticket card in the series. If 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.
7. A printed flare will be furnished to the organization with each deal of charitable gaming tickets, club special, tip board, series of paddlewheel ticket cards, and punchboard. Each flare must fully describe the name of the game, manufacturer's form number (excluding a flare for a deal of jar tickets), 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. The symbol or set of symbols must be actually pictured on the flare, not merely described. 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.
8. For each 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.
9. A distributor shall indicate the following information on each deal of club specials and tip boards if that information is known by the distributor:
- a. Cost per play.
  - b. Ideal cash prizes by denomination, including any last sale feature.
10. A distributor shall indicate the following information on each sports-pool board sold if that information is known by the distributor:
- a. Cost per play.
  - b. Ideal cash prizes.
  - c. Method of prize payout.
11. A distributor shall indicate the following on the flare of each series of paddlewheel ticket cards:
- a. Game serial number of the lowest numbered paddlewheel ticket card in the series.
  - b. Game serial number of the highest numbered paddlewheel ticket card in the series.
  - c. Quantity of paddlewheel ticket cards in the series.
  - d. Type of paddlewheel tickets (for example, 40 x 3 x 120), if applicable.
12. The phrase "retail value of prize \$ \_\_\_\_\_" is to be conspicuously printed on each punchboard sold that has a merchandise prize.

13. The phrases "sporting event \_\_\_\_\_" and "method of prize payout \_\_\_\_\_" are to be conspicuously printed on each calcutta board sold.
14. The phrases "cost per play \$ \_\_\_\_\_" and "retail value of prize \$ \_\_\_\_\_" are to be conspicuously printed on each seal board sold.
15. A state gaming stamp must be placed by a distributor only on an item which conforms to all requirements of this state's laws and rules and may not be placed upon an item prohibited by the attorney general from sale or play within this state.
16. A state gaming stamp must be placed by the distributor only on an item which the distributor sells or provides, and may not be transferred or provided to any other distributor.
17. No person other than a licensed distributor may obtain state gaming stamps. Only licensed distributors may affix state gaming stamps to deals of charitable gaming tickets, club special, tip board, seal board, punchboard, sports-pool board, calcutta board, or the master flare of a series of paddlewheel ticket cards.
18. 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 discontinuance of business.
19. If a distributor is notified by an organization that the game serial number of a deal, punchboard, series of paddlewheel 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 b of subsection 3 of section 99-01-10-04) 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 April 1, 1992.



General Authority: NDCC 53-06.1-17

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

99-01-20-24. Distributor's sales to organizations which conduct games of chance on tribal land, Indian tribes, United States military bases, and out-of-state purchasers. Gaming equipment and supplies sold by a distributor to organizations which conduct games of chance on tribal land, Indian tribes for use on the Indian reservation, United States military bases for use on the military base, and out-of-state purchasers for use out of state must either be shipped directly to the Indian tribe, United States military base, or out-of-state site or the distributor shall verify that the purchaser represents the organizations which conduct games of chance on tribal land, Indian tribe, represents the United States military base, or is from out of state. This verification applies only if the gaming equipment and supplies are not shipped directly to the purchaser and 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 an organization which conducts games of chance on tribal land or 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-25. Distributor's 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. If a game has a flare, the flare must indicate that the game is for promotional purposes only and that no purchase is necessary to receive a ticket.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-26. Rebate of purchase prices by distributor. Rebates of purchase prices, discounts, or reimbursements (for example - defective games) allowed by a distributor must be separately stated on the original sales invoice or separately invoiced on a credit memo referenced to the original sales invoice.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-27. 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, sports-pool board, series of paddlewheel ticket cards, or calcutta board to a distributor for 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, sports-pool board, series of paddlewheel ticket cards, or calcutta board that is sold or otherwise provided to the organization.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-28. Reconciliation of inventory control records.

1. A distributor shall, on at least a semiannual basis, reconcile (compare) its inventory control records (see subsection 2 of section 99-01-20-11) of deals of charitable gaming tickets, club specials, and tip boards that are recorded as being in inventory to deals of charitable gaming tickets, club specials, and tip boards that are actually in inventory. A gaming employee or volunteer shall physically count the actual deals of charitable gaming tickets, club specials, and tip boards in inventory, compare this count to the inventory control records, and resolve any difference. The physical count must be performed by a person other than the person who is primarily responsible for safeguarding the physical inventory of the deals of charitable gaming tickets, club specials, and tip boards.
2. A gaming employee or volunteer 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 used.
  - d. Result and corrective action taken.
  - e. Signature of the person who performed the reconciliation.
3. A distributor shall, when requested by the attorney general, account for the state gaming stamps issued to the distributor and which have not been reported by the distributor to the attorney general on a distributor's sales invoice or as being voided. When this section is applied, the attorney general shall provide each distributor with a report of the distributor's outstanding gaming stamps according to the attorney general's records.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-29. Recordkeeping system required. A 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 orders for recording all gaming equipment and supplies for games of chance purchased or otherwise procured for resale or other distribution.
2. Sales invoices for recording all gaming equipment, supplies, and services for games of chance sold or otherwise provided to licensed organizations or organizations which have been issued a local permit, organizations which conduct games of chance on tribal land, gaming schools, Indian tribes, United States military bases, out-of-state purchasers, affiliated company, other North Dakota licensed distributors, and other persons authorized by the attorney general. The sales invoices must be prepared legibly on a standard form prescribed by the attorney general and must include at least the following information:
  - a. License number of the distributor.
  - b. Complete business name and address of the licensed organization, organization which has been issued a local permit, organization which conducts games of chance on tribal land, gaming school, other licensed distributor, or other person authorized by the attorney general which purchased the gaming equipment, supplies, or service. 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. Complete business name and address of the licensed organization, organization which has been issued a local permit, organization which conducts games of chance on tribal land, gaming school, other licensed distributor, or other person authorized by the attorney general where the gaming equipment or supplies were shipped to or where the service was performed.
  - d. License or permit number of the organization, gaming school, or tribal license number of the Indian tribe.
  - e. Invoice number.
  - f. Invoice date.
  - g. Date shipped.
  - h. Purchase order number, if available.
  - i. An indication for a credit memo.

- j. Quantity (by the number of deals for charitable gaming tickets, by the number of boards for punchboards, sports pools, and calcutta boards, and by the number of series of paddlewheel ticket cards).
  - k. 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 paddlewheel ticket cards. For a deal of charitable gaming tickets involving pull-tabs (two-ply cards or three-ply cards with perforated break-open tabs), the description must include the manufacturer's form number. For a series of paddlewheel ticket cards, the description must include the specific number of paddlewheel ticket cards within each series and the specific number of paddlewheel tickets on each card. For sales to organizations which conduct games of chance on tribal land, Indian tribes, United States military bases, and out-of-state purchasers, the game serial number of each game must be included.
  - l. Gaming stamp numbers.
  - m. Ideal gross proceeds for each different deal, board, or series of paddlewheel ticket cards.
  - n. Ideal adjusted gross proceeds for each different deal or board.
  - o. Value of a last sale feature, if applicable.
  - p. If applicable, an indication that the deal was resealed by the distributor and the reason for the resealing.
3. A sales invoice 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. A 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. A credit memo for a returned item must be prepared in the same detail as provided by subdivisions a and b of subsection 3. A credit memo must represent only a returned item. No distributor may accept deals of charitable gaming tickets, including club specials, tip boards, and seal boards, series of paddlewheel ticket cards, punchboards, sports-pool boards, and calcutta boards unless that distributor initially sold those same items to the licensed organization, organization which has been issued a local permit, or gaming school.
4. Sales journal which must include at least the following:
  - a. Date of the sale.
  - b. Sales invoice number of the sale.
  - c. Name of the organization or distributor remitting the payment.
  - d. Total amount of the sales invoice.
5. Cash receipts journal must record cash sales, cash received from all sources, and must include at least the following:
  - a. Date the payment was received.
  - b. Name of the organization or distributor remitting the payment.
  - c. Amount of payment received.
6. Cash payments journal (check register) must include a recording of all checks issued by the distributor, cash payments made by the distributor, payments made by any other means, and must include at least the following:
  - a. Date the check was issued or payment made.
  - b. Number of the check issued.
  - c. Name of the payee.
  - d. Expenses categorized by type. An expense incurred by a distributor must be documented by an invoice or other appropriate supporting document.
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 April 1, 1992.

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

99-01-20-30. Distributor's information reports. A distributor shall file a copy of each sales invoice as described by subsection 2 of section 99-01-20-29, the gaming stamp log described by subsection 7 of section 99-01-20-29, and voided state gaming stamps. They must be filed by the fifth business day of the week following the month in which each sales invoice and gaming stamp log were prepared and the month 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 annually by the distributor.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-20-31. Examination of books and records. The attorney general may examine or cause to be examined the books and records of any distributor or affiliated company 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 distributor or affiliated company may prohibit, interfere with, or otherwise impede that examination but shall cooperate and assist with that examination and provide that information to the attorney general as may be requested.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-15.1, 53-06.1-17

99-01-20-32. 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 license.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

CHAPTER 99-01-21  
MANUFACTURERS OF CHARITABLE GAMING TICKETS

Section	
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99-01-21-01. License required.

1. No manufacturer of charitable gaming tickets or any other person may sell, offer for sale, or otherwise provide games of charitable gaming tickets 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-21-02. 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. 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. 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 those distributors, businesses, or organizations.
4. Clear and legible example of the label or trademark printed on manufactured charitable gaming tickets.
5. Consent by the manufacturer to allow 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 office of secretary of state evidencing that a corporation foreign to North Dakota has complied with North Dakota Century Code chapter 10-22.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

**99-01-21-03. 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 charitable gaming tickets and as a manufacturer of paper bingo cards (see chapter 99-01-22), only one annual license fee of two thousand dollars is required.
2. A manufacturer's license must be reapplied for on April first of each year. There may be no proration of the license fee.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

**99-01-21-04. Manufacture.** Other than a manufacturer of charitable gaming tickets required to be licensed by the attorney general under subsection 1 of section 99-01-21-01, 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 that manufacturing activity with the attorney general before selling, marketing, or otherwise distributing that equipment. A 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 that manufacturing activity with the attorney general.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-21-05. 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 99-01-21-02.
2. A manufacturer may not sell or provide any deal of charitable gaming tickets to a licensed distributor unless the manufacturer has been inspected either by the attorney general, 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-21-06. Manufacturer 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-21-07. Minimum quality standards for the manufacture of deals of charitable gaming tickets. A licensed manufacturer of deals of charitable gaming tickets, excluding a seal board, for sale in the state of North Dakota shall manufacture 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. A deal 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 deal must bear the same game serial number. There may not be more than one game serial number in each deal. The same game serial number must not be repeated on the same form number for three years.
- 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. Displacement of the numbers or symbols to the left or right in a window is allowed for increased game security.
- d. The window slits on each charitable gaming ticket must be perforated on all three sides. All charitable gaming tickets must be glued on all four edges and between each window. The glue must be of sufficient strength and type to prevent the separation or delamination of the charitable gaming ticket.

2. **Opacity.** Concealed numbers, symbols, or winner protection features may not be viewed or determined from the outside of the charitable gaming ticket using a high intensity lamp of five hundred watts, with or without utilizing a focusing lens.

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, and d do not need to be applied to a folded or banded jar ticket or to a two-ply card or three-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-character game serial number, printed on the game information side of the ticket.
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 winning charitable gaming ticket, or other similar protection must be placed in the winning windows of winning tickets. Also, a winning charitable gaming ticket that awards a prize greater than twenty dollars must use a secondary form of winner verification to protect against counterfeiting.
6. Randomization. The winning charitable gaming ticket must be distributed and mixed among all other charitable gaming tickets in a deal to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning charitable gaming ticket may be determined. The deal of charitable gaming ticket must be assembled so that no placement of winning or losing charitable tickets exists that allows the possibility of prize manipulation, or "pick out". Banded jar tickets packaged in bags, rather than boxes, are also subject to this requirement.
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. A deal's package, box, bag, or other container must be sealed at the factory with a seal including a written warning to the purchaser (end user) that the deal 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. A manufacturer shall seal or tape, with a tamper-resistant seal or tape, every entry point into a container of charitable gaming tickets prior to shipment. The seal or tape must be of such construction to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible. For jar tickets packaged in a bag, the glue used to seal the flap of the bag must be permanent adhesive glue. The required seal may not be a manufacturer's cellophane shrink wrap.

- b. A manufacturer shall print, in bold print of sufficient size to be easily read, on the outside of the package or container of charitable gaming tickets the following message: "Charitable gaming tickets must be removed from this packaging container and thoroughly mixed prior to sale to the public".
- c. A deal's game serial number must be clearly and legibly placed on the outside of the deal's package, box, bag, or other container or be able to be clearly viewed from the outside of the package, box, or other container.
- d. For deals shipped to the state of North Dakota, the flare for a charitable gaming ticket (two-ply or three-ply card with perforated break-open tabs) deal and a specialty jar ticket deal 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-21-08. Minimum quality standards for the manufacture of paper-type punchboards. A 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-21-09. Prohibition of a manufacturer from transacting business in this state. The attorney general may prohibit a manufacturer from transacting business in this state if that

manufacturer's games of charitable gaming tickets or punchboards do not meet the minimum quality standards of these rules as determined by the attorney general.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-21-10. 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 99-01-21-07, 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. A distributor, 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-21-11. Sales invoice required.

1. No manufacturer may sell or otherwise provide to a licensed distributor, or accept from a distributor, any gaming equipment without recording the transaction on a sales invoice. The sales invoices must be prepared legibly and must include at least the following information:
  - a. License number of the distributor.
  - b. Complete business name and address of the licensed distributor.
  - c. Complete business name and address where the gaming equipment was shipped to.
  - d. Invoice number.
  - e. Invoice date.
  - f. Date shipped.
  - g. Purchase order number, if available.
  - h. An indication for a credit memo.
  - i. Quantity of the number of deals of charitable gaming tickets and the number of punchboards.
  - j. A complete description of each deal of charitable gaming tickets and punchboards sold, including the name of game and respective game serial number. The names of games and respective game serial numbers may be listed on an addendum to the sales invoices. For a deal of charitable gaming tickets involving pull-tabs (two-ply or three-ply cards with perforated break-open tabs), the description must also include the manufacturer's form number.
2. A credit memo for returned deals of charitable gaming tickets

or punchboards must be prepared in the same detail as prescribed by subsection 1. A credit memo must represent only items returned to the manufacturer.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-21-12. Rebate of purchase prices by manufacturer. A rebate of a purchase price or discount 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-21-13. Administrative or criminal complaint in another state - Notification. If an administrative or criminal complaint has been filed in another state against a manufacturer of 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 license.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

99-01-21-14. Inspection of manufacturing facility. A manufacturer of charitable gaming tickets 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 charitable gaming tickets are manufactured.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-21-15. Recordkeeping system required. A 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-21-16. Examination of books and records. The attorney general may examine or cause to be examined the books and records of a 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-15.1, 53-06.1-17

#### CHAPTER 99-01-22 MANUFACTURERS OF PAPER BINGO CARDS

Section	
99-01-22-01	License Required
99-01-22-02	License Application Information
99-01-22-03	License Fee and Reapplication Date
99-01-22-04	Special Sales Restriction
99-01-22-05	Manufacturer to Sell Only to Licensed Distributors
99-01-22-06	Minimum Information to be Printed on Manufactured Paper Bingo Cards
99-01-22-07	Sales Invoice Required
99-01-22-08	Rebate of Purchase Prices by Manufacturer
99-01-22-09	Manufacturer Appointed Agent
99-01-22-10	Inspection of Manufacturing Facility
99-01-22-11	Recordkeeping System Required
99-01-22-12	Examination of Books and Records
99-01-22-13	Administrative or Criminal Complaint in Another State - Notification

#### 99-01-22-01. 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-22-02. 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 office of secretary of state evidencing that a corporation foreign to North Dakota has complied with North Dakota Century Code chapter 10-22.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-22-03. 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 99-01-21), only one annual license fee of two thousand dollars is required.

2. A manufacturer's license must be reapplied for before April first of each year. There may be no proration of the license fee.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-22-04. 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 99-01-22 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

Law Implemented: NDCC 53-06.1-17

99-01-22-05. Manufacturer 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 April 1, 1992.

General Authority: NDCC 53-06.1-17

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

99-01-22-06. Minimum information to be printed on manufactured paper bingo cards. A 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-22-07. 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-22-08. Rebate of purchase prices by manufacturer. A rebate of a purchase price or discount 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-22-09. Manufacturer appointed agent. A 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-14, 53-06.1-17

99-01-22-10. 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-22-11. Recordkeeping system required. A 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

99-01-22-12. Examination of books and records. The attorney general may examine, or cause to be examined, the books and records of a 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 April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-15.1, 53-06.1-17

99-01-22-13. 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 license.

History: Effective April 1, 1992.  
General Authority: NDCC 53-06.1-17  
Law Implemented: NDCC 53-06.1-17

#### CHAPTER 99-01-23 GAMING SCHOOLS

Section	
99-01-23-01	Gaming School License Required
99-01-23-02	Gaming School License Standards
99-01-23-03	Program of Instruction
99-01-23-04	Facilities, Supplies, and Equipment
99-01-23-05	Recordkeeping System Required

99-01-23-01. 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 April 1, 1992.

General Authority: NDCC 53-06.1-17, 54-12-01.2

Law Implemented: NDCC 53-06.1-17, 54-12-01.2

99-01-23-02. 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 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 with the license application. The qualifications must at least include:
  - a. Its 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 office of 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 owner 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 April 1, 1992.

General Authority: NDCC 53-06.1-17, 54-12-01.2

Law Implemented: NDCC 53-06.1-17, 54-12-01.2

#### 99-01-23-03. 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 at least include:
  - a. Program title.
  - b. 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. Entrance requirements, if any, such as education, physical fitness or dexterity, and the procedure for determining compliance with those requirements.
  - e. Proposed tuition and other charges to the student, including a reference to the respective program.
  - f. Maximum number of students that will be permitted to enroll in any one session of the program.
  - g. 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. 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. 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, a gaming school must have, in writing, certification that the student has completed the course or program.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17, 54-12-01.2

Law Implemented: NDCC 53-06.1-17, 54-12-01.2

**99-01-23-04. 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. A gaming school shall keep an itemized



current list of all gaming equipment used by it. The gaming school shall provide adequate security of its premises for the protection of its gaming equipment.

3. A gaming school must have a telephone number listed in the local telephone directory.

History: Effective April 1, 1992.

General Authority: NDCC 53-06.1-17, 54-12-01.2

Law Implemented: NDCC 53-06.1-17, 54-12-01.2

99-01-23-05. Recordkeeping system required.

1. A 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 April 1, 1992.

General Authority: NDCC 53-06.1-17, 54-12-01.2

Law Implemented: NDCC 53-06.1-17, 54-12-01.2

