

**NORTH DAKOTA ADMINISTRATIVE CODE**

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**TITLE 6**  
**AERONAUTICS COMMISSION**



JUNE 2002

CHAPTER 6-02-02

**6-02-02-02. Application for aerial applicator license.** ~~Every person, partnership, company, corporation, association, or organization desiring to become engaged in, and every person engaged~~ No person may engage in the activity or business of aerial spraying, dusting, fertilizing, or insect control of crops or areas by aircraft or helicopter ~~shall make application for and obtain~~ without first obtaining an aerial applicator's license from the North Dakota aeronautics commission. The application ~~for an aerial applicator's license~~ shall be filed on forms furnished by the commission and shall set forth the following information:

1. The name and address of applicant and whether applicant is a person, partnership, company, corporation, association, or organization.
2. The name and address of all persons designated to pilot all aircraft or helicopters and federal airman certificate numbers.
3. ~~North Dakota state airman registration number for each pilot.~~ The name of the applicant's operator or chief pilot who attended the aerial applicator safety meeting in the calendar quarter preceding the date of the application or received substitute instruction provided by the commission as required in section 6-02-02-04.1.
4. The name and address of the owner of each aircraft or helicopter.
5. The make, model, and type of each aircraft or helicopter to be used together with the current number of its certificate of registration under the laws of this state.
6. The identification mark or number assigned to the aircraft or helicopter by the federal aviation administration.

7. If applicant hires any employees, the applicant's workman's workers' compensation policy and number.

**History:** Amended effective June 1, 2002.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

**6-02-02-04.1. Aerial applicator safety instruction.** For the safety and protection of persons and property, each operator of a business engaged in aerial spraying must attend the annual aerial applicator safety meeting scheduled by the North Dakota aeronautics commission. A chief pilot employed by an operator may attend the meeting in place of the operator. The meeting will be held in the first calendar quarter of each year and address aviation safety, business and operation security, and chemical storage. The commission will provide substitute instruction for operators and chef pilots who for good cause are unable to attend the annual safety meeting. An application for a license for aerial spraying under section 6-02-02-02 will not be approved by the commission unless the applicant's operator or chief pilot has attended the annual safety meeting in the calendar quarter preceding the date of the application or received substitute instruction provided by the commission.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

**6-02-02-08. Registration as certified agricultural chemical applicator requirements.** Repealed effective June 1, 2002.

1. **~~General:~~** ~~No person, manager, owner, partnership, partners, owner-pilot, or chief pilot, except employed pilots other than the chief pilot, shall fly or manage the flight or operation of any aircraft or helicopter for the purpose of applying agricultural chemicals including insecticides, herbicides, fungicides, fertilizers, or other agricultural chemicals, while in flight over this state, without first being individually registered with the aeronautics commission as a certified agricultural chemical aerial applicator as provided for in this section.~~
2. **~~License:~~** ~~No license shall be issued to any applicant by the aeronautics commission authorizing the aerial application of agricultural chemicals, including insecticides, pesticides, herbicides, fungicides, fertilizers, or other chemicals by flight of aircraft or helicopter, unless the manager of such a business, owner, partnership, partners, owner-pilot, and chief pilot, except employed pilots other than the chief pilot, have first been individually registered with the aeronautics commission as a certified agricultural chemical aerial applicator.~~



3. **Certification of agricultural chemical aerial applicators.** The North Dakota aeronautics commission, each year, may annually sponsor an aerial applicators' educational seminar, with the cooperation of the extension service of the North Dakota state university of agriculture and applied science for the purpose of providing up-to-date technical information on the safe and proper aerial application of pesticides, herbicides, fungicides, fertilizers, and other agricultural chemicals and the hazards associated with the use of such materials. Following the educational seminar or school, an open book with study material written examination will be given to all applicants for registration as a certified agricultural chemical aerial applicator. Those applicants that attended the seminar and take the open book written examination prepared by the extension service will be issued a certificate stating that such a person or applicant is registered with the aeronautics commission as a certified agricultural chemical aerial applicator.
4. **Duration of agricultural chemical aerial applicator certificates.** The registration certificates of each certified agricultural chemical aerial applicator shall be valid for two years from January first of the year of issuance, regardless of the month of issuance, and shall automatically expire on January first after a two-year period, except that registration certificates issued to each certified agricultural chemical aerial applicator in the years 1974 and 1975 and subsequent years shall be valid until the North Dakota pesticide control board implements and makes an effective date for the certification requirements provided for in North Dakota Century Code chapter 4-35.
5. **Nonresidents and others may be certificated by examination.** Nonresidents, residents, and others who do not hold a valid registration as a certified agricultural chemical aerial applicator may take an open book with study material written examination at the North Dakota department of agriculture, state capitol, Bismarek, North Dakota, until the North Dakota pesticide control board implements and makes an effective date for the certification requirements for aerial crop sprayers provided for in North Dakota Century Code chapter 4-35. Applicants taking the open book written examination at the department of agriculture will be advised after the examination whether they failed or passed. Applicants failing the examination must wait three days before the written examination will be given the second time and in the event of subsequent failure, three days following date of examination must elapse before taking another examination.
6. **Waivers of examination and certification may be issued under emergency conditions - termination date.** In the event of an emergency involving a sudden infestation or for other reasons requiring additional aerial applicators or pilots in excess of the normal number available in the state, the director of the North Dakota aeronautics

~~commission may issue individual waivers of the examination and certification requirements for pilots or aerial applicators when it is deemed to be required by the director in the public interest, except such authority shall terminate at such time as the North Dakota pesticide control board implements and makes an effective date for the certification requirements for aerial crop sprayers provided for in North Dakota Century Code chapter 4-35. The waiver shall be issued only for the period of the emergency.~~

**General Authority:** NDCC-2-05-18

**Law Implemented:** NDCC-2-05-18

**6-02-02-10. Chemical Application knowledge and procedures.** To protect adjacent crops and to maintain minimum aerial applicator standards for the safety of the farmer and the pilot, the following rules, regulations, and standards are established:

1. **Flagmen.** The use of flagmen is left to the discretion of the operator, owner-pilot, or chief pilot, except flagmen are required for all aerial spraying or fertilizing conducted by an employed apprentice agricultural pilot with no previous aerial spraying experience until such time as the pilot's supervisor decides that the pilot is proficient and may use an accepted method of flagging.
2. **Automatic flagman.** ~~Automatic~~ An automatic flagman may be used at the discretion of the operator, owner-pilot, or chief pilot, except as provided by subsection 1.
3. **Smoke generators to measure wind conditions.** Aircraft engine smoke generators may be used at the discretion of the operator, owner-pilot, or chief pilot.

**History:** Amended effective June 1, 2002.

**General Authority:** NDCC 2-05-18

**Law Implemented:** NDCC 2-05-18

**TITLE 20**  
**STATE BOARD OF DENTAL EXAMINERS**



JUNE 2002

CHAPTER 20-01-01  
ORGANIZATION OF BOARD

Section  
20-01-01-01 Organization and Functions of State Board of Dental  
Examiners

**20-01-01-01. Organization and functions of state board of dental examiners.**

1. **History and functions.** In 1895 a five-member state board of dental examiners was created to examine dentists as to their qualifications and to license and register qualified dentists.
2. **Board membership.** The board consists of seven members appointed by the governor. Five members must be licensed dentists, one member must be a licensed hygienist, and one member must be a consumer. Members of the board serve five-year terms. No member may serve more than ten years or two 5-year terms of office.
3. **Board members.** Members of the board are elected by the board to fill the individual positions of president, ~~vice president~~ president-elect, and secretary-treasurer. The position of executive director has been created to assist the secretary-treasurer.
4. **Inquiries.** Inquiries regarding the board may be addressed to the executive director of the board:

Dr. Wayne A. Mattern, D.D.S.  
State Board of Dental Examiners  
Box 7246  
Bismarck, ND 58507-7246

701-223-1474

**History:** Amended effective October 1, 1988; November 1, 1988; July 1, 1993; May 1, 1996; June 1, 2002.

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

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

## CHAPTER 20-01-02

**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 replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.
2. "Board certified" means the dentist has been certified in a specialty area where in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
3. "Board eligible" means the dentist has successfully completed a duly accredited training program or in the case of a dentist in practice at the time of the adoption of these rules has experience equivalent to such a training program in an area of dental practice where in which there is a certifying body approved by the commission on dental accreditation of the American dental association.
4. "Certified dental assistant" means a dental assistant who has satisfactorily completed the educational requirements specified by the commission on dental accreditation of the American dental association for dental assistants or has two years of full-time work experience, and who has passed and currently holds the dental assisting national board (DANB) certification examination for dental assistants.
5. "Combination inhalation - enteral conscious sedation" (combined conscious sedation) means conscious sedation using inhalation and enteral agents.

When the intent is anxiolysis only, and the appropriate dosage of agents is administered, then the definition of enteral or combined inhalation-ental conscious sedation (combined conscious sedation), or both, does not apply.

Nitrous oxide/oxygen when used in combination or with sedative agents may produce anxiolysis, conscious or deep sedation, or general anesthesia.

6. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of

a written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.

6. ~~"Conscious sedation" means a drug-induced state in which the patient is calmed and relaxed, capable of making rational responses to commands and has all protective reflexes intact, including the ability to clear and maintain the patient's own airway in a patent state, but does not include nitrous oxide sedation.~~
7. "Conscious sedation" means depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or a combination thereof. The drugs or technique, or both, should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.
8. "Coronal polishing" is the mechanical polishing of clinical crowns using 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.
- 8: 9. "Deep sedation" is an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently or to respond purposefully to physical stimulation or verbal command, and is produced by pharmacological or nonpharmacological method, or combination thereof.
10. "Dental assistant" means a person who under the direct supervision of a dentist renders assistance to a dentist or dental hygienist as described in article 20-03.
- 9: 11. "Dental hygienist" means any person who is a graduate of a school of dental hygiene with a minimum of two academic years of dental hygiene curriculum approved or provisionally approved by the commission on dental accreditation of the American dental association and who is registered and licensed by the North Dakota state board of dental examiners.
- 40: 12. "Dental technician" means any individual who offers or undertakes to perform the fabrication or repair of corrective or prosthetic dental devices according to the written instructions of a licensed dentist. A certified dental technician is an individual who is specifically qualified through education and experience and who has successfully completed the



written and practical certification examinations administered by the national board for certification, and who further maintains certification through compliance with continuing education requirements as stipulated by the national board for certification.

- 41: 13. "Direct supervision" means the dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, evaluates the performance of the dental hygienist or dental assistant.
- 42: 14. "Evaluation" means the act or process by a dentist of assessing and determining the significance, quality or work of something such as the patient's oral health status, the progress of dental therapy, or the performance of the dental hygienist or dental assistant.
- 43: 15. "General anesthesia" means ~~a controlled~~ an induced state of unconsciousness ~~produced by pharmacologic or nonpharmacologic methods, or a combination thereof;~~ accompanied by a partial or complete loss of protective reflexes, including ~~an~~ the inability to ~~independently~~ continually maintain an airway independently and ~~to respond purposefully to physical stimulation or verbal commands~~ command, and is produced by a pharmacological or nonpharmacological method, or a combination thereof.
- 44: 16. "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. Limitations are contained in North Dakota Century Code section 43-20-03.
- 45: 17. "Indirect supervision" means that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.
- 46: 18. "Local anesthesia" means the elimination of sensations in one part of the body by regional injection of drugs without causing the loss of consciousness.
- 47: 19. "Modified general supervision" means that the dentist must personally evaluate the patient, diagnose the conditions to be treated, and plan and authorize treatment. The dentist must personally evaluate the patient at each visit, but need not be present when treatment is initiated or

remain until procedures are completed on a patient of record who has been seen in the office in the previous twelve months.

- 18: 20. "Oral hygiene treatment planning" means the process of assessing and determining, by the dentist and the hygienist, the services the dental hygienist will perform, including preventative, educational, and instrumentation. This treatment plan is an organized sequence of events that is a part of the dentist's total treatment plan. The total treatment plan and diagnosis are to be determined by the dentist.
- 19: 21. "Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.
- 20: 22. "Personal supervision" means a level of supervision indicating that the dentist or dental hygienist is personally treating a patient and authorizes the dental hygienist or dental assistant to aid the treatment by concurrently performing a supportive procedure.
- 21: 23. "Primary practice site" means the office location that is to be considered the main location of the dental practice. This office location would be listed first on the annual registration.
- 22: 24. "Qualified dental assistant" means a dental assistant who has been employed and trained as a dental assistant for at least six months working at least twenty-four hours per week, has completed ~~the dental assisting national board (DANB)~~ a board-approved infection control seminar and passed the x-ray and infection control portions of the DANB ~~exam examination~~, and has applied to the board and paid the certificate fee determined by the board.
- 23: 25. "Registered dental assistant" means a dental assistant who is a graduate of a dental assistant program approved or provisionally approved by the commission on dental accreditation of the American dental association, or who has completed two years of full-time work experience as a dental assistant and has completed dental assistant national boards, or who has completed a course in dental assisting which is approved by the North Dakota board of dental examiners, and who is registered by the North Dakota state board of dental examiners.
- 24: 26. "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on the dentist's annual registration certificate.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002.

**General Authority:** NDCC 43-28-06

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

## CHAPTER 20-02-01

### 20-02-01-05. Permit for anesthesia use.

1. ~~On and after October 1, 1993, a dentist licensed under North Dakota Century Code chapter 43-28 and practicing in North Dakota may not use general anesthesia or conscious sedation on any patient unless such dentist has a permit, currently in effect, issued by the board, initially for a period of twelve months and renewable annually thereafter, authorizing the use of such general anesthesia or conscious sedation. The rules in this chapter are adopted for the purpose of defining standards for the administration of anesthesia by dentists. The standards specified in this chapter shall apply equally to general anesthesia and parenteral sedation, but do not apply to sedation administered through inhalation. A dentist licensed under North Dakota Century Code chapter 43-28 and practicing in North Dakota may not use general anesthesia or conscious sedation on any patient unless such dentist has a permit, currently in effect, issued by the board, initially for a period of twelve months and renewable annually thereafter, authorizing the use of such general anesthesia or conscious sedation.~~
2. An applicant may not be issued a permit initially as required in subsection 1 unless:
  - a. The dental examiners approve the applicant's facility after an inspection conducted by an individual or individuals designated by the dental examiners;
  - b. The dental examiners are satisfied that the applicant is in compliance with guidelines in the American dental association guidelines for teaching and comprehensive control of pain and anxiety in dentistry policy statement: THE USE OF CONSCIOUS SEDATION, DEEP SEDATION AND GENERAL ANESTHESIA FOR DENTISTS (October 2000); and
  - c. The initial application includes payment of a fee in the amount determined by the dental examiners.
3. The dental examiners may renew such permit annually, provided:
  - a. Application for renewal is received by the dental examiners before the date of expiration of such permit;
  - b. Payment of a renewal fee in the amount to be determined by the dental examiners is received with such application; and

- c. An onsite evaluation of the dentist's facility may be conducted by an individual ~~or individuals~~ designated by the dental examiners, and the dental examiners must approve the results of each such evaluation.

**History:** Effective October 1, 1993; amended effective May 1, 1996; June 1, 2002.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

**20-02-01-06. Continuing dental education for dentists, dental hygienists, and dental assistants.** Each dentist, dental hygienist, or dental assistant licensed or registered in this state shall provide evidence on forms supplied by the board that the person has attended or participated in continuing dental education in accordance with the following conditions:

1. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in actual teaching sessions. Subject matter directly related to clinical dentistry will be accepted by the board without limit. Limits are established for nonclinical subjects and home study courses.
2. The minimum number of hours required within a ~~five-year~~ two-year cycle for dentists is ~~eighty~~ thirty-two. Of these hours, a dentist may earn no more than ~~fifteen~~ six hours in nonclinical subjects relating to the dental profession and no more than ~~twenty-six~~ ten hours through home study courses.
3. The minimum number of hours required within a ~~five-year~~ two-year cycle for dental hygienists is ~~forty~~ sixteen. Of these hours, a dental hygienist may earn no more than ~~eight~~ three hours in nonclinical subjects relating to the dental profession and no more than ~~thirteen~~ five hours through home study courses.
4. The minimum number of hours for a registered dental assistant and a qualified dental assistant is eight hours annually. Of these hours, a registered dental assistant or qualified dental assistant may earn no more than ~~four~~ three hours in nonclinical subjects relating to the dental profession and no more than ~~three~~ two hours through home study courses.
5. Nonclinical subjects relating to the dental profession are those which cover skills relating to dental services in general which are not related to, but are nevertheless supportive of, the provision of clinical dental services. Examples of nonclinical subjects relating to the dental profession are patient management, the legal and ethical responsibilities of the dental profession, and stress management.

6. Examples of nonclinical subjects that will not be creditable to the continuing education requirement are those that deal with estate planning, financial planning, marketing, investments, and personal health.
7. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable ~~towards~~ toward the continuing dental education requirement.
8. The infection control continuing education requirement for dentists, dental hygienists, registered dental assistants, and qualified dental assistants practicing in North Dakota is two hours biennially and is a requirement for renewal of the annual certificate of registration. This training may be accomplished in an office setting or at a sponsored course.

**History:** Effective October 1, 1993; amended effective May 1, 1996; August 1, 1998; June 1, 2002.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-20-12.1, 43-28-06, 43-28-12.2

## CHAPTER 20-03-01

**20-03-01-01. Duties.** A dental assistant may perform the services listed in subsections 1 through 6 under direct supervision of a licensed dentist. A dental assistant may perform the duties set forth in subsections 7 through ~~28~~ 30 only if the dental assistant is a registered dental assistant. A qualified dental assistant may perform the duties set out in subsections 1 through 7.

1. Take and record pulse, blood pressure, and temperature.
2. Take and record preliminary dental and medical history for the interpretation by the dentist.
3. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
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~~ inlays, crowns, bridges, and orthodontic appliances with hand instruments only.
12. Place and remove orthodontic wires or appliances that have been activated by the dentist.
13. ~~Tie~~ Place, tie, and remove ligature wires ~~or~~ and elastic ties.
14. Preselect and prefit orthodontic bands.
15. Fabricate, place, and remove a temporary crown, bridge, 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 dry socket medications and packing.
18. Place orthodontic elastic-type separators.
19. ~~Remove ligature wires or elastic ties, or both.~~ Place temporary restorative material.
20. Remove arch wires.
21. Cut arch wires, remove loose bands, or remove loose brackets on orthodontic appliances to provide palliative treatment, under general supervision.
22. Perform nonsurgical clinical and laboratory oral diagnosis tests, including pulp testing, for interpretation by the dentist.
23. Polish the coronal surfaces of the teeth with a rubber cup or brush only after necessary scaling by a hygienist or dentist.
24. Acid-etch enamel surfaces prior to ~~pit and fissure sealants~~; direct bonding of orthodontic brackets; or composite restorations.
25. Take impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental assistants may take impressions for athletic mouth guards, ~~or~~ splints, bleaching trays, and rapid palatal expanders, ~~or both~~.
26. Apply desensitizing solutions to the external surfaces of the teeth.
27. Place and remove matrix bands and wedges.
28. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the teeth.
29. Apply pit and fissure sealants.
30. Dry root canal with paper points.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002.

**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 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, with the exception of taking impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental assistants may take impressions for athletic mouth guards and splints, bleaching trays, or rapid palatal expanders.
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 unless the assistant has complied with section 20-03-01-04.
11. Placing bases or cavity liners.
12. Scaling, root planing, or gingival curettage.
13. Measuring the gingival sulcus with a periodontal probe.

**History:** Effective February 1, 1992; amended effective October 1, 1993; April 1, 2000; June 1, 2002.

**General Authority:** NDCC 43-20-10

**Law Implemented:** NDCC 43-20-12

**20-03-01-03. Annual registration of dental assistants performing expanded duties.**

1. Any individual engaged in performing expanded duties in the practice of dental assisting in the state of North Dakota (those duties set out in subsections 7 through ~~28~~ 30 of section 20-03-01-01) must register with the board of dental examiners by submitting an application accompanied



by a fee determined by the board. Thereafter, on a yearly basis, before expiration, every dental assistant performing expanded duties shall transmit to the board a registration fee determined by the board and evidence of completion of continuing education requirements, together with other pertinent information as required. At least thirty days before the certificate of registration expiration date, the executive director of the board shall send to every dental assistant performing expanded duties a written notice stating the amount and due date of the fee. A late fee determined by the board shall be assessed if the registration renewal application and fee are not received by the board before expiration.

2. A An initial certificate of registration may be issued by the board to a dental assistant when:
  - a. The dental assistant has applied to the board and paid the registration fee determined by the board; and
  - b. The dental assistant possesses one of the following professional qualifications:
    - (1) The dental assistant is currently dental assistant certified by the dental assisting national board;
    - (2) The dental assistant has completed a course in dental assisting from a school of dental assisting accredited by the commission on dental accreditation of the American dental association; or
    - (3) The dental assistant has completed a course in dental assisting which is approved by the North Dakota board of dental examiners.
3. Every registered dental assistant performing expanded duties shall provide the board a current business mailing address. A registered dental assistant may not practice in this state for more than thirty days after a change of business address without providing the board with written notice of the new address by first-class mail.
4. Each year registered dental assistants performing expanded duties shall submit to the board with the annual registration evidence of attendance or participation in continuing dental education acceptable to the board. To remain in good standing, a registered dental assistant performing expanded duties must complete at least eight hours of continuing education each year. The board shall suspend the registration of any person who fails to comply with this section.

5. ~~A~~ An initial certificate of qualification to take dental radiographs (allows subsections 1 through 7 in section 20-03-01-01) may be issued by the board to a dental assistant when:
  - a. The dental assistant has applied to the board and paid the certificate fee determined by the board.
  - b. The dental assistant has been employed and trained as a dental assistant for at least six months working at least twenty-four hours per week.
  - c. The dental assistant has completed a board-approved infection control ~~training program~~ seminar and passed the x-ray and infection control portions of the dental assisting national board ~~exam~~ examination.
6. A dental assistant who is not registered or qualified may, at the direction of a licensed dentist, perform only basic dental assisting services listed in subsections 1 through 6 of section 20-03-01-01.
7. Current certification in cardiopulmonary resuscitation shall be required for registration of all dental assistants.

**History:** Effective October 1, 1993; amended effective May 1, 1996; July 1, 1998; April 1, 2000; June 1, 2002.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

**20-03-01-04. Criteria for dental assistants placing sealants. A dental assistant may place sealants, if the following criteria are met:**

1. The assistant is currently certified by the dental assisting national board (DANB) and currently registered with the state board of dental examiners of the state of North Dakota; and
2. The assistant is a graduate within the past two years of an accredited school recognized by the commission on dental accreditation of the American dental association (CODA), or if not a graduate of a CODA accredited school within two years, if the assistant successfully completes a board-approved sealant class or course offered at an accredited school.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-06

## CHAPTER 20-05-01

**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 one hundred sixty dollars.
4. ~~The certificate of registration annual renewal fee is one hundred ten dollars for a dentist and fifty-five dollars for a dental hygienist.~~ The fee for annual registration for registered or qualified dental assistants is thirty-five dollars. The certificate of registration biennial renewal fee is two hundred twenty dollars for a dentist and one hundred ten dollars for a dental hygienist.
5. ~~In addition to the fee for renewal, the penalty for late renewal of the annual certificate of registration is one hundred ten dollars for dentists, fifty-five dollars for dental hygienists, and thirty-five dollars for dental assistants.~~ In addition to the fee for renewal, the penalty for late renewal of the biennial certificate of registration is two hundred twenty dollars for dentists, one hundred ten dollars for dental hygienists, and thirty-five dollars for late renewal of the annual certificate of registration for dental assistants.
6. The fee to replace or provide a duplicate copy of a dental or dental hygiene license is forty-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. Maximum number of years will be five (maximum fee five hundred fifty dollars for dentists; three hundred twenty-five dollars for hygienists).
8. The nonrefundable fee to process an application by a Moorhead, Minnesota, dentist for a restricted dental license to treat emergency dental patients at board-approved settings is one hundred dollars.

9. The annual registration fee for renewal of a restricted dental license to treat emergency dental patients at board-approved settings is fifty dollars.
10. The fee for an onsite facility inspection to obtain a permit for anesthesia use will be at a rate similar to compensation paid board members for services rendered to the state of North Dakota.
11. The fee for initial application and annual renewal of a permit to use general anesthesia or conscious sedation is fifty dollars.
12. The fee for a volunteer dental license is thirty-five dollars.

**History:** Effective May 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002.

**General Authority:** NDCC 43-28-06

**Law Implemented:** NDCC 43-28-27

**TITLE 38**  
**HIGHWAY PATROL**



JUNE 2002

CHAPTER 38-07-01

**38-07-01-01. Definitions.** In this article, unless the context or other subject matter requires:

1. "Contract" means a written agreement between the commercial driver training school and a student for classroom instruction ~~or~~, behind-the-wheel training, ~~or both~~ internet course, or any combination thereof.
2. "Internet course" means an electronic course of instruction as authorized under paragraph 2 of subdivision a of subsection 2 of North Dakota Century Code section 39-06-01.1.
3. "Lesson" means a continuous period of time during which instruction is given for the purpose of operating a motor vehicle whether by classroom instruction ~~or~~, practice driving, or internet course. A one-hour lesson means one hour of actual instruction.
- ~~3.~~ 4. "Location" means a designated site at which the business of a commercial driver training school is transacted and its records are kept.
- ~~4.~~ 5. "Superintendent" means the superintendent of the North Dakota highway patrol.

**History:** Effective December 1, 1988; amended effective June 1, 2002.

**General Authority:** NDCC 39-25-02

**Law Implemented:** NDCC 39-06-01.1, 39-25-01

## CHAPTER 38-07-02

**38-07-02-01. License requirements.** No commercial driver training school may be established or operated unless such school shall apply for and obtain a license on the form prescribed by the superintendent. A commercial driver training school may be licensed to offer instruction through an internet course only. The superintendent shall issue a license indicating restricted to instruction through "Internet Course Only".

**History:** Effective December 1, 1988; amended effective June 1, 2002.

**General Authority:** NDCC 39-25-03

**Law Implemented:** NDCC 39-06-01.1, 39-25-03

### **38-07-02-03. Business records.**

1. A permanent record of every person given lessons or services of any kind relating to classroom or, behind-the-wheel, or internet course instruction in the operation of a motor vehicle must list the following information:
  - a. Name of student.
  - b. Address of student.
  - c. Date of birth of student.
  - d. Contract number.
  - e. Date and type of lesson.
  - f. Initials or name of instructor.
  - g. Social security or identification number.
2. The contract file must contain the original, subsequent, or renewal contract agreements entered into between the school and the person receiving the lesson or other services relating to the operation of a motor vehicle. Each original, subsequent, and renewal contract must be maintained for a period of not less than three years following instruction.
3. The vehicle file must contain a current list of all vehicles used by the school for driver training purposes showing date and location of the most recent inspection and must include a copy of vehicle lease agreements if applicable.
4. All records must be maintained in a businesslike manner and are subject to the inspection of the superintendent or the superintendent's authorized



representative at any time during reasonable business hours. The loss, ~~mutilation~~ mutilation, or destruction of records which the school is required to maintain must be reported immediately to the superintendent and must state:

- a. The date such records were lost, destroyed, or mutilated.
- b. The circumstances involving such loss, destruction, or mutilation.
- c. The name of the law enforcement office or fire department officials to whom such loss was reported and the date of such report.

**History:** Effective December 1, 1988; amended effective June 1, 2002.

**General Authority:** NDCC 39-25-03

**Law Implemented:** NDCC 39-06-01.1, 39-25-03

#### **38-07-02-04. Advertising.**

1. Commercial driver training schools may not:

- ~~1.~~ a. Publish, advertise, or intimate that a ~~driver~~ driver's license is guaranteed or assured.
- ~~2.~~ b. Duplicate or reproduce (in whole or in part) for use in advertising or instruction any forms used by the North Dakota highway patrol in the driver licensing function without specific approval of the superintendent.
- ~~3.~~ c. Advertise or intimate that a commercial ~~driver~~ driver's or instructor's license encompasses certification by the North Dakota department of public instruction.
- ~~4.~~ d. Advertise the address of any location other than the authorized principal place of business or licensed branch office.

2. Any advertising conducted for the internet course must include the language:

"This course is approved for instruction in North Dakota pursuant to North Dakota Century Code section 39-06-01.1 and North Dakota Administrative Code article 38-07."

**History:** Effective December 1, 1988; amended effective June 1, 2002.

**General Authority:** NDCC 39-25-02

**Law Implemented:** NDCC 39-06-01.1, 39-25-03

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

1. All contracts between schools and students must be on a form approved by the superintendent. 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, except an electronic contract is acceptable for the internet course only.
  - f. The date of the contract.
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. An electronic contract is acceptable for the internet course only.
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 driver's license is obtained, to give free lessons, or to offer premiums or provide discounts if a driver driver's 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; June 1, 2002.

**General Authority:** NDCC 39-25-02

**Law Implemented:** NDCC 39-06-01.1, 39-25-03

## CHAPTER 38-07-03

**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~~ Safety restraint for each occupant of the vehicle.
6. ~~Shoulder harnesses for front seat occupants~~ Air bags if originally equipped for such vehicles.

**History:** Effective December 1, 1988; amended effective April 1, 1992; June 1, 2002.

**General Authority:** NDCC 39-25-02

**Law Implemented:** NDCC 39-25-03

## CHAPTER 38-07-04

**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. Furnish the superintendent information relating to all previous places of residence located outside of the state of North Dakota.
3. Be at least twenty-one years of age.
- ~~3:~~ 4. Read, write, and speak the English language.
- ~~4:~~ 5. 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:~~ 6. Have been a licensed driver for three years, holding a valid North Dakota driver driver's 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:~~ 7. 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:~~ 8. Not have been convicted of a crime involving moral turpitude.
- ~~8:~~ 9. Furnish the superintendent with one set of fingerprints and photographs and authorize investigation to determine if the applicant has a criminal record.
- ~~9:~~ 10. 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 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.

40: 11. 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. The superintendent may periodically require a licensed instructor to submit to a physical examination by a licensed physician and a certificate of the examination must be submitted to the superintendent.

44: 12. 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. Instructor preparation courses must be submitted to and approved by the superintendent. Preparation courses conducted by a licensed commercial driver training school must consist of both classroom training and practical driving situations. At a minimum, instructor development training should consist of thirty hours of classroom and thirty hours of behind-the-wheel practical training. The behind-the-wheel practical training must consist of both actual driving and riding along and observing a licensed instructor during a student training session. Driver education instructor development courses offered through a university system will also be considered for approval.

13. Instructor requirements may be waived by the superintendent for good cause when pertaining to a commercial driving school licensed to offer the internet course only.

**History:** Effective December 1, 1988; amended effective April 1, 1992; June 1, 2002.

**General Authority:** NDCC 39-25-02

**Law Implemented:** NDCC 39-06-01.1, 39-25-04

## CHAPTER 38-07-05

**38-07-05-01. Training curriculum.** A complete and up-to-date copy of the internet course, classroom, and behind-the-wheel or on-cycle training curriculum for each class of license for which instruction is offered must be submitted to and approved by the superintendent. Instruction must meet the minimum requirements of any federal or state standards that are or may be established regarding the length of lesson and methods of instruction.

**History:** Effective December 1, 1988; amended effective June 1, 2002.

**General Authority:** NDCC 39-25-02

**Law Implemented:** NDCC 39-06-01.1, 39-25-03, 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. Any type of simulation training shall be in addition to student completion of at least six hours of actual behind-the-wheel driving in a motor vehicle.
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 driver instruction permit or driver driver's 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; June 1, 2002.

**General Authority:** NDCC 39-25-02

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

**38-07-05-05. Internet course completion certificate.** North Dakota Century Code section 39-06-01.1 permits an applicant under the age of eighteen years, whose driver's license has been canceled, to complete an internet course through a licensee under North Dakota Century Code chapter 39-25. Verification of successful completion of the internet course must be in the form of an internet course completion certificate issued by the licensee.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 39-25-02

**Law Implemented:** NDCC 39-06-01.1



**TITLE 43**  
**INDUSTRIAL COMMISSION**



**JULY 2002**

**CHAPTER 43-02-03**

**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 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 [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].
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 per square inch 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. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial, nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.
11. "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.
- 44: 12. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.
- 42: 13. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.
- 43: 14. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into 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.
- 44: 15. "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.
- 45: 16. "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 absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].
- 46: 17. "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.

- ~~17:~~ 18. "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:~~ 19. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.
- ~~19:~~ 20. "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:~~ 21. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.
- ~~21:~~ 22. "Gas-oil ratio" means the ratio of the gas produced in cubic feet to a barrel of oil concurrently produced during any stated period.
- ~~22:~~ 23. "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:~~ 24. "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:~~ 25. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.
- ~~25:~~ 26. "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:~~ 27. "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.

- 27: 28. "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: 29. "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: 30. "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: 31. "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 plugging and resulting waste.
- 31: 32. "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.
- 32: 33. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
- 33: 34. "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: 35. "Normal unit allowable" means the amount of allowable production allocated to proration units which are producing from a depth of five thousand feet [1524 meters] or above.
- 35: 36. "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: 37. "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: 38. "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:~~ 39. "Operator" is the principal on the bond covering a well and such person shall be responsible for drilling, completion, and operation of the well, including plugging and reclamation of the well site.
- ~~39:~~ 40. "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:~~ 41. "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.
- ~~41:~~ 42. "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:~~ 43. "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:~~ 44. "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:~~ 45. "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:~~ 46. "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:~~ 47. "Proration unit for gas" consists of such geographical area as may be prescribed by special pool rules issued by the commission.
- ~~47:~~ 48. "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:~~ 49. "Recomplete" means the subsequent completion of a well in a different pool.
- ~~49:~~ 50. "Reservoir" means pool or common source of supply.
- ~~50:~~ 51. "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: ~~52.~~ "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in. ~~Not, not~~ to be confused with bottom hole pressure.
- 52: ~~53.~~ "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: ~~54.~~ "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 with no intent to produce oil or gas from such well.
- 54: ~~55.~~ "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 unsalable 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: ~~56.~~ "Top unit allowable for gas" means the maximum number of cubic feet of natural gas, for the proration period, allocated to a proration unit for gas in an allocated gas pool.
- 56: ~~57.~~ "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: ~~58.~~ "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: ~~59.~~ "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; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

#### 43-02-03-14.2. Oil and gas metering systems.



1. **Application of section.** This section is applicable to all metering stations measuring production from oil and gas wells within the state of North Dakota, including private, state, and federal wells. If these rules differ from federal requirements on measurement of production from federal oil and gas wells, the federal rules take precedence.
2. **Definitions.** As used in this section:
  - a. "Allocation meter" means a meter used by the producer to determine the volume from an individual well before it is commingled with production from one or more other wells prior to the custody transfer point.
  - b. "Calibration test" means the process or procedure of adjusting an instrument, such as a gas meter, so its indication or registration is in satisfactorily close agreement with a reference standard.
  - c. "Custody transfer meter" means a meter used to transfer oil or gas from the producer to transporter or purchaser.
  - d. "Gas gathering meter" means a meter used in the custody transfer of gas into a gathering system.
  - e. "Meter factor" means a number obtained by dividing the net volume of fluid (liquid or gaseous) passed through the meter during proving by the net volume registered by the meter.
  - f. "Metering proving" means the procedure required to determine the relationship between the true volume of a fluid (liquid or gaseous) measured by a meter and the volume indicated by the meter.
3. **Inventory filing requirements.** ~~Within sixty days of adoption of these rules, the~~ The owner of metering equipment shall file with the commission an inventory of all meters used for custody transfer and allocation of production from oil or gas wells, or both. Inventories must be updated on an annual basis, and filed with the commission on or before the first day of each year, or they may be updated as frequently as monthly, at the discretion of the operator. Inventories must include the following:
  - a. Well name and legal description of location or meter location if different.
  - b. North Dakota industrial commission well file number.
  - c. Meter information:
    - (1) Gas meters:

- (a) Make and model.
- (b) Differential, static, and temperature range.
- (c) Orifice tube size (diameter).
- (d) Meter station number.

(2) Oil meters:

- (a) Make and model.
- (b) Size.
- (c) Meter station number.

4. **Installation and removal of meters.** The commission must be notified of all custody transfer meters placed in service. The owner of the custody transfer equipment shall notify the commission of the date a meter is placed in service, the make and model of the meter, and the meter or station number. The commission must also be notified of all metering installations removed from service. The notice must include the date the meter is removed from service and the meter or station number. The required notices must be filed with the commission within thirty days of the installation or removal of a meter.

All allocation meters must be approved prior to installation and use. The application for approval must be on a sundry notice (form 4) and shall include the make and model number of the meter, the meter or station number, the well name, its location, and the date the meter will be placed in service.

Meter installations for measuring production from oil or gas wells, or both, must be constructed to American petroleum institute or American gas association standards or to meter manufacturer's recommended installation. Meter installations constructed in accordance with American petroleum institute or American gas association standards in effect at the time of installation shall not automatically be required to retrofit if standards are revised. The commission will review any revised standards, and when deemed necessary will amend the requirements accordingly.

5. **Registration of persons proving or testing meters.** All persons engaged in meter proving or testing of oil and gas meters must be registered with the commission. Those persons involved in oil meter testing, by flowing fluid through the meter into a test tank and then gauging the tank, are exempted from the registration process. However,

such persons must notify the commission prior to commencement of the test to allow a representative of the commission to witness the testing process. A report of the results of such test shall be filed with the commission within thirty days after the test is completed. Registration must include the following:

- a. Name and address of company.
- b. Name and address of measurement personnel.
- c. Qualifications, listing experience or specific training.

Any meter tests performed by a person not registered with the commission will not be accepted as a valid test.

**6. Calibration requirements.** Oil and gas metering equipment must be proved or tested to American petroleum institute or American gas association standards or to the meter manufacturer's recommended procedure to establish a meter factor or to ensure measurement accuracy. The owner of a custody transfer meter or allocation meter shall notify the commission at least ten days prior to the testing of any meter.

- a. Oil allocation meter factors shall be maintained within two percent of original meter factor. If the factor change between provings or tests is greater than two percent, the meter must be repaired or adjusted and tested within forty-eight hours of repair or replaced.
- b. Copies of all oil allocation meter test procedures are to be filed with and reviewed by the commission to ensure measurement accuracy.
- c. All gas meters must be tested with a minimum of a three-point test for static and differential pressure elements and a two-point test for temperature elements. The test reports must include an as-found and as-left test and a detailed report of changes.
- d. Test reports must include the following:
  - (1) Producer name.
  - (2) Lease name.
  - (3) Pipeline company or company name of test contractor.
  - (4) Test personnel's name.
  - (5) Station or meter number.

- e. Unless required more often by the director, minimum frequency of meter proving or calibration tests are as follows:
- (1) Oil meters used for custody transfer shall be proved monthly for all measured volumes which exceed two thousand barrels per month. For volumes two thousand barrels or less per month, meters shall be proved at each two thousand barrel interval or more frequently at the discretion of the operator.
  - (2) Quarterly for oil meters used for allocation of production.
  - (3) Semiannually for gas meters used for allocation of production.
  - (4) Semiannually for gas meters in gas gathering systems.
  - (5) For meters measuring more than one hundred thousand cubic feet [2831.68 cubic meters] per day on a monthly basis, orifice plates shall be inspected semiannually, and meter tubes shall be inspected at least every five years to ensure continued conformance with the American gas association meter tube specifications.
  - (6) ~~Semiannually for orifice plates and annually for any meter~~ For meters measuring one hundred thousand cubic feet [2831.68 cubic meters] per day or less on a monthly basis, orifice plates shall be inspected annually.
- f. Meter test reports must be filed within thirty days of completion of proving or calibration tests unless otherwise approved. Test reports are to be filed on, but not limited to, all meters used for allocation measurement of oil or gas and all meters used in crude oil custody transfer.
- g. Accuracy of all equipment used to test oil or gas meters must be traceable to the standards of the national institute of standards and technology. The equipment must be certified as accurate either by the manufacturer or an independent testing facility. The certificates of accuracy must be made available upon request. Certification of the equipment must be updated as follows:
- (1) Annually for all equipment used to test the pressure and differential pressure elements.
  - (2) Annually for all equipment used to determine temperature.
  - (3) Biennially for all conventional pipe provers.

(4) Annually for all master meters.

(5) Five years for equipment used in orifice tube inspection.

7. **Variations.** Variations from all or part of this section may be granted by the commission on the basis of economic necessity providing the variance does not affect measurement accuracy. All requests for variations must be on a sundry notice (form 4).

A register of variations requested and approved must be maintained by the commission.

**History:** Effective May 1, 1994; amended effective July 1, 1996; September 1, 2000; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

#### 43-02-03-15. Bond and transfer of wells.

1. **Bond requirements.** Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, or injection shall submit to the commission, and obtain its approval, a surety bond or cash bond in a form approved by the commission, conditioned as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.
2. **Bond amounts and limitations.** 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 approved by the 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 bond conditioned as provided by law. A blanket bond covering ten wells or less shall be in the amount of fifty thousand dollars provided the bond shall be limited to no more than five of the following in aggregate and a blanket bond covering more than ten wells shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than ten of the following in aggregate:
  - a. A well that is a dry hole and is not properly plugged and the site is not properly reclaimed; and
  - b. A well that is plugged and the site is not properly reclaimed; and
  - c. A well that is abandoned pursuant to section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed.

If this aggregate of ~~dry holes and abandoned wells~~ is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be exercised under the permits until the aggregate of ~~dry holes and abandoned wells~~ drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes and, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

- 3. Unit bond requirements.** Prior to commencing unit operations, the operator of any area under unitized management shall submit to the commission, and obtain its approval, a surety bond or cash bond in a form approved by the commission, conditioned as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

Prior to transfer of a unit to a new operator, the commission, after notice and hearing, may revise the bond amount for a unit, or in the case when the unit was not previously bonded, the commission may require a bond and set a bond amount for the unit.

- 4. Bond terms.** The bond herein required shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
- 5. Transfer of wells under bond.** 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 the well,

such as producers, not ready for plugging, the principal should proceed as follows:

- a. The principal must notify the director, in writing, of all proposed transfers of well wells at least thirty days before the closing date of the transfer. The director may, for good cause, waive the this requirement of ~~at least thirty days' notice prior to transfer.~~

The principal shall submit to the commission a form 15 reciting that a certain well, or wells, describing each well by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form 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 and the transferee's surety.

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order ~~of the commission.~~
- c. The transferee (new operator) of any oil, gas, or injection well shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior 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 and reclamation 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 wells is completed and approved.

6. **Treating plant bond.** Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval, of a surety, or cash bond conditioned as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
7. **Bond termination.** The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.
8. **Director's authority.** The 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; May 1, 1994; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-16. Application for permit to drill and recomplete.** 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 director, together with a permit fee of one hundred dollars. Verbal approval may be given for site preparation by the director in extenuating circumstances. No drilling activity shall commence until such application is approved and a permit to drill is issued by the director. ~~Permits to drill or recomplete may contain such terms and conditions as the director deems necessary.~~ The application must be accompanied by the bond pursuant to section 43-02-03-15 or the applicant must have previously filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is completed.



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. The plat shall also include latitude and longitude of the proposed well location to the nearest hundredth tenth of a second. 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 director may request additional information, if deemed necessary.~~

Prior to the commencement of recompletion operations or drilling horizontally in the existing pool, an application for permit shall likewise be filed with the director. Included in such application shall be the notice of intention (form 4) to reenter a well by drilling horizontally, 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~~ with a permit fee of fifty dollars. ~~The director may request additional information, if deemed necessary.~~

The applicant shall provide all information, in addition to that specifically required by this section, if requested by the director. The director may impose such terms and conditions on the permits issued under this section as the director deems necessary.

The director shall deny an application for a permit to drill if a well drilled in the location applied for under this section if the proposal would cause, or tend to cause, waste or violate correlative rights. The 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 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. Recompletion operations must commence within one year of the date of approval or permission to recomplete shall terminate and be of no further force and effect.~~

A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled below surface casing. A permit to

recomplete or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced.

**History:** Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000; July 1, 2002.

**General Authority:** NDCC 38-08-05

**Law Implemented:** NDCC 38-08-05

**43-02-03-18. Drilling units - Well locations.** In the absence of an order by the commission setting spacing units for a pool:

1. a. Vertical or directional oil wells projected to a ~~true vertical~~ depth of ~~nine thousand feet [2743.2 meters] or less~~ not deeper than the Mission Canyon formation 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 order of the commission.
- b. Vertical or directional oil wells projected to a ~~true vertical~~ depth ~~greater than nine thousand feet [2743.2 meters]~~ deeper than the Mission Canyon formation 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. a. Horizontal wells projected to a ~~true vertical~~ depth of ~~nine thousand feet [2743.2 meters] or less~~ not deeper than the Mission Canyon formation, with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.4 meters], must be drilled upon a tract described as two adjacent governmental quarter-quarter sections within the same quarter section or equivalent lots, located not less than five hundred feet [152.4 meters] to the outside boundary of such tract. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.

- b. Horizontal wells projected to a ~~true vertical depth of more than nine thousand feet [2743.2 meters]~~ deeper than the Mission Canyon formation, with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least five hundred feet [152.4 meters], must be drilled upon a tract described as two adjacent governmental quarter sections within the same section or equivalent lots, located not less than six hundred sixty feet [201.2 meters] to the outside boundary of such tract. No more than one well may be drilled to the same pool on any such tract, except by order of the commission.
3. ~~a. No well shall be drilled for gas on a tract of land consisting of 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.~~

Gas wells projected to a depth not deeper than the Mission Canyon formation shall be drilled upon a governmental quarter section or equivalent lots, located not less than five hundred feet [152.4 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 lot containing less than one hundred forty-five acres [14.57 hectares] except by order of the commission.

- b. Gas wells projected to a depth deeper than the Mission Canyon formation shall be drilled upon 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 lot containing less than one hundred forty-five acres [14.57 hectares] except by order of the commission.

4. Within thirty days, 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 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.

5. If the director denies an application for permit, the director shall advise the applicant immediately of the reasons for denial. The decision of the director may be appealed to the commission.

**History:** Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; July 1, 2002.

**General Authority:** NDCC 38-08-04, 38-08-07

**Law Implemented:** NDCC 38-08-04, 38-08-07

**43-02-03-19. Reserve pit for drilling mud and drill cuttings - Reclamation of surface.** In the construction of a drill site, access road, and all associated facilities, the topsoil shall be removed, stockpiled, and stabilized or otherwise reserved for use when 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.

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. A reserve pit may be utilized to contain solids and fluids used and generated during well drilling and completion operations, providing the pit can be constructed, used and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. In special circumstances, the director may prohibit construction of a reserve pit or may impose more stringent pit reclamation requirements. Under no circumstances shall reserve pits be used for disposal, dumping, or storage of fluids, wastes, and debris other than drill cuttings and fluids used or recovered while drilling and completing the well.

~~Reserve pits shall not be located in, or hazardously near, stream courses bodies of water, nor shall they block natural drainages. 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 debris 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. No reserve pit shall be wholly or partially constructed in fill dirt unless approved by the director.~~

When required by the director, the reserve pit or site or appropriate parts thereof must be fenced.

~~In the construction of a drill site, access road, and all associated facilities, the topsoil shall be removed, stockpiled, and stabilized or otherwise reserved for use when 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.~~

- ~~1. Within a reasonable time, but not more than one year, after the completion of a well, the reserve pit shall be reclaimed, or in the case of a plugged well, the site shall be reclaimed. Prior to the commencement of such operations reclaiming the pit, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a pit reclamation plan. Verbal approval to commence reclamation reclaim the pit may be given, in which case the operator shall file a subsequent notice with the director reporting the work performed. Any operator may be required to perform additional work if the director determines that the work performed does not constitute proper reclamation, or does not comport with the sundry notice submitted. The notice shall state the name and location of the well, the~~

name of the operator, and the method of reclamation, and shall include a statement of proposed work. Such work shall include, but not be limited to:

1. ~~The site or unused portion shall be reclaimed as closely as practicable to original condition. This work will be done within a reasonable time after plugging or setting production casing.~~
  - a. The name and address of the reclamation contractor;
  - b. The name and address of the surface owner;
  - c. The location and name of the disposal site for the pit water; and
  - d. A description of the proposed work, including details on treatment and disposition of the drilling waste.

All pit water and oil on the pit must be removed prior to reclamation. Drilling waste should be encapsulated in the pit and covered with at least four feet [1.22 meters] of backfill and topsoil and surface sloped, when practicable, to promote surface drainage away from the reclaimed pit area.

2. Within a reasonable time, but not more than one year, after a well is plugged, the well site, access road, and other associated facilities constructed for the well shall be reclaimed as closely as practicable to original condition, or in the case of a completed well, the unused portion of the site shall be reclaimed. Prior to site reclamation, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a reclamation plan. Verbal approval to reclaim the site may be given. The notice shall include, but not be limited:
  - a. The name and address of the reclamation contractor;
  - b. The name and address of the surface owner;
  - c. A description of the proposed work, including reclamation plans for the access road and other associated facilities; and
  - d. Reseeding plans, if applicable.

All production equipment, waste, and debris shall be removed from the site. Flow lines shall be purged in a manner approved by the director. Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

- ~~2.~~ 3. ~~After plugging, gravel~~ Gravel or scoria other surfacing material shall be removed and the well site and, access road, and other associated facilities constructed for the well shall be reshaped as near as is practicable to original contour.
- ~~3.~~ 4. The stockpiled topsoil shall be evenly distributed over the disturbed area, and where applicable the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.
- ~~4.~~ 5. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.
6. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road.

**History:** Amended effective March 1, 1982; January 1, 1983; May 1, 1992; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-21. Casing, tubing, and cementing requirements.** All wells drilled for oil, natural gas, or injection shall be completed with strings of casing which shall be properly cemented at sufficient depths to adequately protect and isolate all formations containing water, oil, or gas or any combination of these; protect the pipe through salt sections encountered; and isolate the Dakota-Lakota series.

Drilling of the surface hole shall be with freshwater-based drilling mud or other method approved by the director which will protect all freshwater-bearing strata. The surface casing shall consist of new or reconditioned pipe that has been previously tested to one thousand pounds per square inch [6900 kilopascals]. The surface casing shall be set and cemented at a point not less than fifty feet [15.24 meters] below the base of the Fox Hills formation. Sufficient cement shall be used on surface casing to fill the annular space behind 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 director.

Surface casing strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least three hundred fifty pounds per square inch [2415 kilopascals] within seventy-two hours. All compressive strengths on surface

casing cement shall be calculated at a temperature of eighty degrees Fahrenheit [26.67 degrees Celsius].

Production or intermediate casing strings shall consist of new or reconditioned pipe that has been previously tested to two thousand pounds per square inch [13800 kilopascals]. Such strings must be allowed to stand under pressure until the tail cement has reached a compressive strength of at least five hundred pounds per square inch [3450 kilopascals]. All filler cements utilized must reach a compressive strength of at least two hundred fifty pounds per square inch [1725 kilopascals] within twenty-four hours and at least five hundred pounds per square inch [3450 kilopascals] within seventy-two hours. All compressive strengths on production or intermediate casing cement shall be calculated at a temperature found in the Mowry formation using a gradient of 1.2 degrees Fahrenheit per one hundred feet [30.48 meters] of depth plus eighty degrees Fahrenheit [26.67 degrees Celsius]. After cementing, the casing shall be tested by application of pump pressure of at least one thousand five hundred pounds per square inch [10350 kilopascals]. If, at the end of thirty minutes, this pressure has dropped one hundred fifty pounds per square inch [1035 kilopascals] or more, the casing shall be repaired. Thereafter, the casing shall again be tested in the same manner. Further work shall not proceed until a satisfactory test has been obtained. The casing in a horizontal well may be tested by use of a mechanical tool set near the casing shoe after the horizontal section has been drilled.

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; July 1, 1996; January 1, 1997; September 1, 2000; July 1, 2002.

**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 director on a sundry notice (form 4) and shall proceed with diligence to ~~correct the defect~~ conduct tests, as approved or required by the director, to properly evaluate the condition of the well bore. The director may allow the well bore condition to remain if correlative rights can be protected without endangering potable waters. ~~If the defect cannot be eliminated, the~~ The well shall be properly plugged ~~unless otherwise approved if requested~~ by the director.



Any well with open perforations above a packer shall be considered to have defective casing.

**History:** Amended effective January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-23. Blowout prevention.** In all drilling operations, proper and necessary precautions shall be taken for keeping the well under control, including the use of a blowout preventer and high pressure fittings attached to properly cemented casing strings adequate to withstand anticipated pressures. During the course of drilling, the pipe rams shall be functionally operated at least once every twenty-four-hour period. The blind rams shall be functionally operated each trip out of the well bore. The blowout preventer shall be pressure tested at installation on the wellhead, after modification of any equipment, and every ~~fourteen~~ thirty days thereafter. The director may postpone such pressure test if the necessity therefor can be demonstrated to the director's satisfaction. All tests shall be noted in the driller's record.

**History:** Amended effective January 1, 1983; September 1, 2000; July 1, 2002.

**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~~ After the plugging of a well, a plugging record (form 7) shall be filed with the director. ~~Within thirty days after~~ After the completion of a well, or recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6) shall be filed with the 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 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 operator shall cause to be run a gamma ray log from total depth to ground level elevation of the well bore. The operator shall cause to be run a log from which the presence of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. ~~Within thirty days after completion, two~~ Two copies of all logs run shall be submitted to the director free of charge. Logs shall be submitted as one paper copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem

test reports and charts, formation water analyses, core analyses, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the director on new permits, except the operator name, well name, location, and any production runs, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall 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 shall commence on the date the well is spudded.

All information furnished to the director on recompletions or reentries, except the operator name, well name, location, and any production runs, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the well was approved for recompletion or reentry, whichever is earlier. Any information furnished to the director prior to approval of the recompletion or reentry shall remain public.

Approval must be obtained on a sundry notice (form 4) from the director prior to perforating or recompleting a well in a pool other than the pool in which the well is currently permitted.

~~Upon the completion or recompletion of a well,~~ After 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 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 shots per foot, 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 on a flowing well, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a 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~~.

All forms, reports, logs, and other information required by this section shall be submitted within thirty days after the completion of such work, although 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.

**History:** Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-32. Stratigraphic test and core holes.** Stratigraphic test and core holes shall be permitted the same as oil and gas wells, although no setback from a drilling unit shall be required.

**History:** Amended effective April 30, 1981; January 1, 1983; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-34. Method of plugging.** ~~Any well~~ All wells 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~~ director. ~~Casing~~ All casing strings shall be cut off at least three feet [91.44 centimeters] below the final surface contour, and a cap shall be welded thereon. Core or stratigraphic test holes drilled to or below sands containing freshwater shall be plugged 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; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-35. Conversion of mineral wells to freshwater wells.** Any person desiring to ~~obtain approval from the commission for a conversion of~~ convert a mineral well to a freshwater well, as provided by North Dakota Century Code section 61-01-27, shall file an application for approval with the commission. The application must include, but is not limited to, ~~all of~~ the following:

1. If the well is to be used for other than individual domestic and livestock use, a conditional water permit issued by the state water commission.
2. An affidavit by the person desiring to obtain approval for the conversion stating that such person has the authority and assumes all liability for the use and plugging of the proposed freshwater well.
3. The procedure which will be followed in converting the mineral well to a freshwater well.

4. An if the well is not currently plugged and abandoned, an affidavit must be executed by the operator of the well indicating that the parties responsible for drilling and plugging the mineral well have no objection to the conversion of the mineral well to a freshwater well.

If the commission, after notice and hearing, determines that a mineral well may safely be used as a freshwater well, the commission may approve the conversion.

**History:** Amended effective April 30, 1981; January 1, 1983; September 1, 1987; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-49. Oil spills, tanks, dikes, and seals.** Storage of oil in underground or partially buried tanks or containers is prohibited. Oil may be stored in surface tanks providing they are devoid of leaks and in good condition. Dikes must be erected and maintained around oil tanks at any production facility built or rebuilt on or after July 1, 2000.

Dikes must be erected around oil tanks at any new production facility within thirty days after the well has been completed. Dikes must be erected and maintained around oil tanks at production facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes must be constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. Discharged oil must be properly removed and may not be allowed to remain standing within or outside of any diked areas. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.

At no time shall oil be allowed to flow over or pool on the surface of the land or infiltrate the soil. Discharged oil must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

Numbered metal security seals shall be properly utilized on all 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; September 1, 2000; July 1, 2002.

**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 processed, stored, and disposed of without pollution of freshwater

supplies. At no time shall saltwater liquids or brines be allowed to flow over or pool on the surface of the land or infiltrate the soil.

2. Underground disposal of saltwater liquids and brines shall be in accordance with chapter 43-02-05.
3. 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 must be erected and maintained around saltwater tanks at any saltwater handling facility built or rebuilt on or after July 1, 2000. Dikes must be erected around saltwater tanks at any new facility within thirty days after the well has been completed. Dikes must be erected and maintained around saltwater tanks at saltwater handling facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes must be constructed of sufficiently impermeable material to provide emergency containment and of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged saltwater liquids or brines must be properly removed and may not be allowed to remain standing within or outside of any diked areas.
4. The operator shall take steps to minimize the amount of solids stored at the facility.

**History:** Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-62. Carbon dioxide, coal bed methane, helium, and nitrogen.** Insofar as is applicable, the provisions of this chapter relating to gas, gas wells, and gas reservoirs shall also apply to carbon dioxide, coal bed methane, helium, nitrogen, carbon dioxide wells, coal bed methane wells, helium wells, nitrogen wells, carbon dioxide reservoirs, coal bed methane reservoirs, helium reservoirs, and nitrogen reservoirs used for the development of oil and gas resources.

**History:** Amended effective January 1, 1983; September 1, 1987; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-85. Books and records to be kept to substantiate reports.** All producers, transporters, storers, refiners, gasoline or extraction plant operators, and initial purchasers within North Dakota shall make and keep appropriate books and records for a period not less than five six years, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

**History:** Amended effective January 1, 1983; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04

**43-02-03-88.2. Hearing participants by telephone.** In any hearing, the commission may, at its option, allow telephonic communication of witnesses and interested parties. The procedure shall be as follows:

1. Telephonic communication of an applicant's witness will only be considered if a written request is made at the time the application is filed with the commission.
2. Telephonic communication of an interested party will only be considered if said party notifies the applicant and the commission in writing at least three business days prior to the hearing date. Such notice shall include the subject hearing, the name and telephone number of the participant, and the name and telephone number of the applicant's attorney or representative that will be present at the hearing.
3. In the event an objection to any party's telephonic communication is received, the examiner may disallow such communication by telephone and may reschedule for an in-person hearing. The commission will notify all parties whether or not the request to participate by telephone is granted or denied.
4. All parties participating by telephone shall have an attorney or representative present at the hearing who shall be responsible for actually calling said party once the case is called for hearing, for providing the commission at the time of the hearing with any documentary evidence requested to be included in the record, and for any other matters necessary for the party to participate by telephone.
5. All parties participating by telephone shall file an affidavit verifying the identity of such party. The record of such telephonic communication shall not be considered evidence in the case unless said affidavit is received by the examiner prior to an order being issued by the commission. The commission shall provide a form affidavit. The commission has the discretion to refuse to consider all or any part of the information received from any party participating by telephone.

6. For all hearings allowing communication by telephone, the commission shall provide a hearing room equipped with a speaker telephone.
7. The cost of telephonic communication shall be paid by the party requesting its use.

**History:** Effective July 1, 2002.

**General Authority:** NDCC 38-08-11

**Law Implemented:** NDCC 28-32-11

**43-02-03-90. Hearings - Complaint proceedings - Emergency proceedings - Other proceedings.**

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~~ 28-32-21 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 fifteen days' notice (except in emergency) of the time and place of hearing thereon by one publication of such notice in a newspaper of general circulation 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 or order without first having a hearing, the emergency rule or order shall have the same validity as if a hearing with respect to the same had been held after notice. The emergency rule 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 or order made after due notice and hearing with respect to the subject matter of such emergency rule or order becomes effective.

Any person moving for a continuance of a hearing, and who is granted a continuance, shall submit ~~a twenty-five dollars~~ dollar fee 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; May 1, 1994; July 1, 1996; July 1, 2002.

**General Authority:** NDCC 38-08-11

**Law Implemented:** NDCC 28-32-05, 38-08-11



## CHAPTER 43-02-05

**43-02-05-11. Bonding requirements.** All injection wells, except commercial injection wells, must be bonded as provided in section 43-02-03-15. A commercial injection well is one that either only 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; July 1, 2002.

**General Authority:** NDCC 38-08-04(2)

**Law Implemented:** NDCC 38-08-04(2)

## CHAPTER 43-02-08

**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 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 director.

The application must include the following:

1. The name and address of the applicant and the name and address of the person operating the well, if different.
2. The legal description of the property for which a determination is requested.
3. 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.
4. 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.
5. 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 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 4~~ of North Dakota Century Code section 57-51.1-01.
6. The monthly production of each oil-producing well on the property during the qualifying period.
7. 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 director may require the applicant to submit additional information.

**History:** Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; May 1, 1994; July 1, 1996; August 1, 1999; July 1, 2002.

**General Authority:** NDCC 38-08-04(5)

**Law Implemented:** NDCC 38-08-04(4), 57-51.1-01

## CHAPTER 43-02-09

**43-02-09-03. Notice of intention to begin a workover project.** If an exemption from taxation is sought pursuant to subsection 4 of North Dakota Century Code section 57-51.1-03, a notice of intention to begin a workover project must be filed by the well operator with the commission prior to commencement of the project. The notice of intention must be sent ~~by certified mail~~ to the following address:

North Dakota State Industrial Commission  
Oil and Gas Division  
600 East Boulevard  
Bismarck, North Dakota ND 58505-0840

The notice of intention must include, but is not limited to, the following:

1. A sundry notice (form 4) upon which it is clearly indicated that it is a notice of intention to perform a workover project ~~which may qualify production from the well for an exemption from taxation pursuant to subsection 4 of North Dakota Century Code section 51-51.1-03.~~
2. The sundry notice must contain a detailed description of the nature and scope of the workover project. The information provided must include a description of all replacement equipment to be installed that is known to the well operator at the time of filing, and whether such equipment is new or used.
3. The average daily production during the latest six calendar months of continuous production.

~~The~~ If required by the director, the operator of the well to be worked over shall make arrangements ~~with the director~~ to determine the crude oil inventory stored on the well premises immediately before the commencement of the workover: ~~Also, and submit~~ all gauge tickets for the month ~~must be submitted if required by the director.~~

Workover projects must be completed within one year after the initial notice of intention to perform a workover is filed. Thereafter such notice is null and void.

**History:** Effective May 1, 1990; amended effective May 1, 1994; July 1, 1996; July 1, 2002.

**General Authority:** NDCC 57-51.1-03

**Law Implemented:** NDCC 57-51.1-03

## CHAPTER 43-02-10

**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 director 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. ~~The application must be submitted to the commission within twelve months after the month in which the first incremental oil was produced.~~

**History:** Effective May 1, 1992; amended effective July 1, 1996; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04, 57-51.1-03

**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 director 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. ~~The application must be submitted to the commission within twelve months after the month in which the first incremental oil was produced.~~

**History:** Effective May 1, 1992; amended effective July 1, 1996; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04, 57-51.1-03

**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, but no projection shall be made greater than fifty years in duration. 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.
  - d. For purposes of determining the primary production provided for in this subsection, where practices and procedures used by the commission cannot be used because production has been restricted due to the prolific nature of the reservoir (such as a Lodgepole reservoir), where unitization is accomplished early in the life of the reservoir, and sufficient primary production history does not exist for decline curve analysis, the commission will have the authority to determine an alternate method using fundamental reservoir engineering principles. One example the commission might use is a pressure decline versus cumulative production plot to estimate the ultimate primary production. Based on available data and reservoir characteristics an initial rate and decline percent would be extrapolated to match the estimated ultimate recovery. In this case the operating company would be required to monitor the reservoir pressure and production and coordinate all activities and measurements with the commission.
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; amended effective February 1, 1998; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04, 57-51.1-01



## CHAPTER 43-02-11

**43-02-11-01. Definitions.** The terms used throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapters 38-08 and 57-51.1, except:

1. "Horizontal reentry well" means a well that was initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well after March 31, 1995. A horizontal reentry well includes a vertical well classified by the industrial commission as a dry hole which is reentered and recompleted as a horizontal well after March 31, 1995.
2. "Horizontal well" means a well with a horizontal displacement of the well bore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].
3. "New well" means a well that was spudded and completed after April 27, 1987.
4. "Two-year inactive well" means a well that has not produced oil in more than one month in the twenty-four-month period immediately preceding the date an application for well status is received by the industrial commission as defined under North Dakota Century Code section 57-51.1-01. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.

**History:** Effective July 1, 1996; amended effective July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04, 57-51.1-03

**43-02-11-02. Application to certify as qualifying a horizontal well, horizontal reentry well, or two-year inactive well.** Any operator desiring to certify a horizontal, horizontal reentry, or two-year inactive well as a "qualifying well" for purposes of eligibility for the tax incentive provided in North Dakota Century Code chapter 57-51.1 shall submit to the director an application for certification of a qualifying well. The operator has the burden of establishing entitlement to certification and shall submit all data necessary to enable the commission to determine whether a well is a qualifying well 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. ~~The application must be received by the commission within seventeen months after the qualification period, completion or recompletion, in order to receive the tax exemption and reduction from the first day of eligibility.~~

**History:** Effective July 1, 1996; amended effective September 1, 2000; July 1, 2002.

**General Authority:** NDCC 38-08-04

**Law Implemented:** NDCC 38-08-04, 57-51.1-03

**43-02-11-03. Application for a tax exemption and reduction for a new well.** ~~Repealed effective July 1, 2002. The application must include the following:~~

- ~~1. The name and address of the applicant and the name and address of the person operating the well, if different.~~
- ~~2. The name and number of the well, and the legal description of the location of the well for which determination is requested.~~
- ~~3. The date the well was spudded, its completion date, and the volume of oil produced prior to completion, if any.~~
- ~~4. 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.~~

~~Test oil produced from a new well prior to completion is exempted from the extraction tax. If the application does not contain sufficient information to make a determination, the director may require the applicant to submit additional information.~~

**History:** ~~Effective July 1, 1996.~~

**General Authority:** ~~NDCC 38-08-04~~

**Law Implemented:** ~~NDCC 38-08-04, 57-51.1-03~~

**TITLE 50**

**STATE BOARD OF MEDICAL EXAMINERS**



MAY 2002

CHAPTER 50-02-03

**50-02-03-01. ~~Diplomates of national board licensed by endorsement~~ Medical licensure examination.** ~~Diplomates of the national board of medical examiners may be accepted for licensure by endorsement. Those applicants for licensure who have obtained a passing score on the FLEX (federation licensing examination), the NBME (national board of medical examiners) examination, the USMLE (United States medical licensing examination), the LMCC (licentiate of the medical council of Canada) examination, the NBOME (national board of osteopathic medical examiners) examination, or the COMLEX (comprehensive osteopathic medical licensing examination) shall be deemed to have met the medical licensure examination requirement specified in subdivision a of subsection 1 of North Dakota Century Code section 43-17-18.~~

**History:** Amended effective May 1, 2002.

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

**Law Implemented:** NDCC 43-17-21

**CHAPTER 50-02-04  
NATIONAL BOARD OF EXAMINERS FOR OSTEOPATHIC PHYSICIANS AND  
SURGEONS, INC.**

[Repealed effective May 1, 2002]

**CHAPTER 50-02-05**

**50-02-05-05. Licentiates of medical council of Canada accepted by endorsement. Repealed effective May 1, 2002. The board may, in its discretion, accept licentiates of the medical council of Canada by endorsement, provided all other North Dakota licensure requirements have been met.**

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

**Law Implemented: NDCC 43-17-18, 43-17-21**

## CHAPTER 50-02-06

**50-02-06-05. Consideration for licensure.** Repealed effective May 1, 2002.  
~~Consideration for licensure will be given to those candidates who, in addition to meeting the other licensing requirements, have successfully passed the federation licensing examination, or the United States medical licensing examination.~~

**History:** ~~Amended effective December 1, 1988; November 1, 1995.~~

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

**Law Implemented:** ~~NDCC 43-17-18~~



## CHAPTER 50-03-01

**50-03-01-04. Supervising physician's responsibility.** For purposes of this section, "supervision" means overseeing the activities of, and accepting the responsibility for, the medical services rendered by a physician assistant. Supervision shall be continuous but shall not be construed as necessarily requiring the physical presence of the supervising physician at the time and place that the services are rendered. It is the responsibility of the supervising physician to direct and review the work, records, and practice of the physician assistant on a daily, continuous basis to ensure that appropriate and safe treatment is rendered. The supervising physician must be available continuously for contact personally or by telephone or radio, and the supervision must include at least eight hours per week of onsite, personal supervision or other electronic means. It is the obligation of each team of physicians and physician assistants to ensure that the physician assistant's scope of practice is identified; that delegation of medical tasks is appropriate to the physician assistant's level of competence; that the relationship of, and access to, the supervising physician is defined; and that a process for evaluation of the physician assistant's performance is established.

**History:** Amended effective July 1, 1988; November 1, 1993; May 1, 2002.

**General Authority:** NDCC 43-17-13

**Law Implemented:** NDCC 43-17-02(10)



**TITLE 54**  
**BOARD OF NURSING**



JUNE 2002

**CHAPTER 54-01-03**  
**DEFINITIONS**

Section

54-01-03-01

Definitions

**54-01-03-01. Definitions.** The terms used in this title have the same meaning as in North Dakota Century Code chapter 43-12.1 and apply to North Dakota Administrative Code title 54 unless the context indicates otherwise.

1. "Abandonment" means accepting the client assignment and disengaging the nurse and client relationship without giving notice to a qualified person.
2. "Abuse" means any behavior that is designed to harass, intimidate, or injure another human being through the use of verbal, sexual, emotional, or physical harm.
3. "Academic requirement" means completion of coursework from an accredited institution of higher learning that meets the criteria and reporting requirements established by the board.
4. "Accountability" means being responsible.
  - a. Licensed nurse accountability means being responsible for decisions in the context of assignment and delegation and for the action of self and for the resultant client outcomes.
  - b. Unlicensed assistive person accountability means being responsible for the action of self.
5. "Activities of daily living" includes interventions associated with nutrition and hydration, elimination, maintaining mobility, assistance with self-administration of routine regularly scheduled medications, and personal cares. Personal care includes bathing, hair care, nail care,

shaving, dressing, oral care, and supporting a safe and healthy environment.

6. "Acts or omissions" means patterns of unsafe behavior, nursing practice deficits, failure to comply with acceptable standards of nursing practice, or grounds for discipline identified in North Dakota Century Code chapter 43-12.1 or these rules.
7. "Applicant" means an individual seeking official action by the board.
8. "Assignment" means a licensed nurse designates another person with the responsibility for performance of nursing interventions. Assignment is not the transfer of authority. Assignments are made to individuals who already have authority to provide nursing interventions through licensure as a nurse.
9. "Assisting with self-administration of routine, regularly scheduled medications" means helping the client with one or more steps in the process of taking medications. Examples of "assisting" include opening the medication container or reminding the client of the proper time to take the medication. Assisting with the administration of medication may be a delegated intervention.
10. "Authority" means legal authority to provide nursing care granted through licensure as a registered nurse, licensure as a practical nurse, or through delegation of nursing interventions from the licensed nurse.
11. "Certification" means a process of voluntary recognition by a national nursing organization of the person's specialty knowledge, skills, and abilities in a defined area of nursing practice. The certification process measures the theoretical and clinical content denoted in the specialty scope of practice and is developed in accordance with generally accepted standards of validity and reliability.
12. "Client" means the recipient of nursing care, which may include an individual, family, group, or a community.
13. "Competence" means the state or quality of being capable as a result of having the required knowledge, skills, and ability.
  - a. Licensed nurse competence means the ability of the nurse to apply interpersonal, technical, and decisionmaking skills at the level of knowledge consistent with the prevailing standard for the nurse's current nursing practice role.

- b. Unlicensed assistive person competence means having the required knowledge, skills, and ability to perform nursing interventions and includes:
- (1) Utilizing effective communication;
  - (2) Collecting basic objective and subjective data;
  - (3) Performing selected nursing interventions safely, accurately, and according to standard procedures; and
  - (4) Seeking guidance and direction when appropriate.
14. "Consultative nurse" means a licensed nurse who provides guidance and information related to nursing procedures and interventions to the facility or agency but is not individually responsible to direct the plan of care for the client.
15. "Continuing education" means planned, organized learning experiences designed to augment the knowledge, skills, and abilities for the delivery of safe and effective nursing care for the citizens of North Dakota which meets the criteria and reporting requirements established by the board.
16. "Delegation" means the transfer of authority and accountability for the performance of selected nursing interventions from a licensed nurse to an unlicensed assistive person. Delegation decision includes:
- a. Determining which nursing intervention may be delegated;
  - b. Selecting which competent unlicensed assistive person may provide the delegated intervention;
  - c. Determining the degree of detail and method to be used to communicate the delegation plan; and
  - d. Selecting a method of supervision and evaluation.
17. "Denial" means the board's refusal to issue or renew a current license or registration.
18. "Direction" means the provision of written or verbal guidance, or both, and supervision by a licensed nurse who is responsible to manage the provision of nursing interventions by another person.
19. "Encumber" means to place on probation.

20. "Health care team" means any health care professional licensed under North Dakota Century Code title 43.
21. "Impaired" means the ability to practice nursing safely has been affected by the use or abuse of alcohol or other drugs or psychiatric or physical disorders.
22. "Incompetence" means conduct that deviates from either standards of nursing practice approved by the board or the definition of competence in this section.
23. "Licensed nurse" means a person licensed pursuant to North Dakota Century Code chapter 43-12.1 and North Dakota Administrative Code title 54.
24. "Licensed practitioner" means a person lawfully authorized to prescribe medications or treatments under North Dakota Century Code title 43.
25. "Licensee" means a person who has met all the requirements to practice as a licensed nurse pursuant to North Dakota Century Code chapter 43-12.1 and has been issued a license to practice nursing.
26. "Licensure" means the process by which the board grants legal privilege to an individual to engage in the practice of nursing upon finding that the individual has attained the essential degree of education and competence necessary to ensure that the public health, safety, and welfare will be protected.
27. "Limit" means to restrict, qualify, or otherwise modify the license or registration.
28. "Major incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a high risk of harm to the client or another person.
29. "Medication administration" means the delivery of medication by a licensed nurse or an individual directly delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.
30. "Minor incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a low risk of harm to the client or another person.



31. "Misappropriation of property" means the patterned or knowing, willful, or intentional misplacement, exploitation, or wrongful, temporary, or permanent use of a client's, employer's, or any other person's or entity's belongings, money, assets, or property without consent.
32. "Neglect" means a disregard for and departure from the standards of care which, under similar circumstances, would be exercised by a competent licensee or registrant, and which has or could have resulted in harm to the client.
33. "Nurse administrator" means a person responsible for organized nursing services and who manages from the perspective of the organization as a whole.
34. "Nurse advocacy committee" refers to the nurse advocacy committee composed of three board members selected by the board and the nurse advocacy program consultant. The purpose of the committee is to review and recommend policy for the nurse advocacy program to the board.
35. "Nurse advocacy consultant" is a registered nurse employed by the board to manage and administer the nurse advocacy program. The program consultant must hold a current unencumbered North Dakota registered nurse license and be qualified through education and experience.
36. "Nurse advocacy program" means the nurse advocacy program administered by the board as set out in the Nurse Practices Act and this title permitting nurses with chemical dependency or psychiatric or physical disorders to seek treatment and participate in monitored practice, voluntarily or by the board's order.
37. "Nurse advocacy program agreement" means an individualized written agreement between the nurse and the nurse advocacy program. The agreement must include the criteria for entrance and the terms and conditions for successful completion of the nurse advocacy program.
38. "Nursing intervention" means the initiation and completion of client-focused actions necessary to accomplish the goals defined in the plan of care. Nursing interventions include activities of daily living.
- a. Nursing interventions vary from setting to setting depending on the client population served and the acuity and complexity of the client's care needs.
  - b. Refer to chapter 54-05-04 for the licensed nurse accountability and responsibility for the delegation process.

39. "Probation" means issuance of a current license or registration marked "encumbered" and identification of specific requirements, restrictions, or limitations against a nursing license or registration for a period of time.
40. "Professional boundaries" means the provision of nursing services within the limits of the nurse and client relationship which promote the client's dignity, independence, and best interests and refrain from inappropriate involvement in the client's or client's family's personal relationships.
41. "Professional misconduct" means any practice or behavior that violates the applicable standards governing the individual's practice necessary for the protection of the public health, safety, and welfare.
42. "Organization policy" means a written plan for the provision of nursing care.
43. "Reactivation" means issuance of a previously active license or registration.
44. "Registrant" means an unlicensed assistive person as defined in North Dakota Century Code section 43-12.1-02.
45. "Reinstatement" means activation of a board-sanctioned license or registration.
46. "Reprimand" means action of the board stating the board's concerns regarding the professional conduct of the licensee or registrant.
47. "Revocation" means the withdrawal by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified length of time of no less than one year. If no specified length of time is identified by the board, revocation is permanent.
48. "Specialty practice registered nurse license" means the document issued to the registered nurse that has met the qualifications outlined in these rules.
49. "Stable and predictable" means a situation in which the client's clinical and behavioral status and nursing care needs are determined by the registered nurse or licensed practitioner to be nonfluctuating and consistent or in which the fluctuations are expected and the interventions are planned.
50. "Stay" means the action of the board that does not immediately take place and may not take place if other conditions, such as probation

terms, are met. Violations of the terms and conditions may result in lifting of the stay and imposition of the sanction.

51. "Supervision" means maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of the client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing nursing care.
  - a. "Condition of supervision" means the method of supervision as direct or indirect, the identification of the persons to be supervised as well as the nursing interventions being provided, and the stability or predictability, or both, of the client's condition.
  - b. "Direct supervision" means that the responsible licensed nurse is physically present in the clinical area and is available to assess, evaluate, and respond immediately. Direct supervision does not mean that the responsible licensed nurse must be in the same room or "looking over the shoulder" of the persons providing nursing care.
  - c. "Indirect supervision" means that the responsible nurse is available through periodic inspection and evaluation or telecommunication, or both, for direction, consultation, and collaboration.
52. "Suspension" means withholding by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified or indefinite period of time.
53. "Technician" means an unlicensed assistive person who may perform limited nursing functions within the ordinary, customary, and usual roles in the person's field. Examples may include surgical and dialysis technicians and medical assistants.
54. "Temporary suspension" means action by the board when there are reasonable grounds to believe the licensee or registrant has violated a statute or rule the board is empowered to enforce and continued practice by the licensee or registrant would constitute a continuing and imminent threat to the public welfare.
55. "Unlicensed assistive person registry" means a listing of all persons who are authorized by the board or included on another state registry, which has been recognized by the board to perform nursing interventions delegated and supervised by a licensed nurse.

56. "Voluntary surrender" means an agreement by the licensee or registrant to conditionally relinquish the license or registration to the board.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08(2)

**Law Implemented:** NDCC 43-12.1-08

## CHAPTER 54-02-01

**54-02-01-06. Examination fees.** The board shall set the fee for licensure by examination. The fee for licensure by examination shall be ninety one hundred ten dollars. The application is valid for a period of time not to exceed twelve months from the determination of eligibility and the fee is nonrefundable. 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; January 1, 1994; September 1, 1994; June 1, 2001; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(4)

## CHAPTER 54-02-05

**54-02-05-03. Renewal fees.** The nonrefundable renewal fee for the registered nurse license will be ~~seventy~~ ninety dollars. The nonrefundable renewal fee for the practical nurse license will be ~~sixty~~ eighty dollars.

**History:** Amended effective November 1, 1979; July 1, 1987; November 1, 1990; June 1, 2001; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(4)

**54-02-05-06. Activating a license.** A nurse previously licensed in North Dakota who applies for relicensure must meet board requirements and pay the nonrefundable renewal and thirty dollar activation fee.

**History:** Amended effective June 1, 1982; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-10

## CHAPTER 54-02-06

**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 nonrefundable endorsement fee of ninety one hundred ten dollars. 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, 54-03.1, or 54-03.2~~ according to the date the applicant enrolled in the nursing education program. Nursing practice to demonstrate continued competency must meet or exceed five hundred hours within the preceding five years.

**History:** Amended effective November 1, 1979; March 1, 1986; March 1, 1992; May 1, 1996; February 1, 1998; June 1, 2001; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(2)

**54-02-06-02. Fee nonrefundable.** The endorsement fee is nonrefundable after the ninety-day permit to practice has been issued.

**History:** Amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(4)

### **54-02-06-03. Exceptions.**

1. North Dakota nurse licensure is not a legal requirement for students enrolled in a board-approved program of nursing education which involves nursing practice such as:
  - a. A program leading to licensure at another level of nursing or to a higher degree;
  - b. A program conducted by a North Dakota health care facility to allow nurses licensed by another jurisdiction to receive short-term clinical education that involves direct patient contact. The North Dakota health care facility that will provide short-term clinical education to persons who do not have a license to practice in North Dakota must submit to and receive written approval from the board for the following information every twenty-four months or as changes occur:
    - (1) The syllabus and objectives for the short-term clinical education activity;
    - (2) The health care facility policy that addresses the following:

- (a) That patient client care is under the direct supervision and responsibility of a registered nurse with a current, unencumbered North Dakota license;
  - (b) The method the facility uses to verify that the nurse receiving the short-term clinical education has a current, unencumbered license in another jurisdiction;
  - (c) The method the facility uses to ensure that no independent or unsupervised nursing practice occurs; and
  - (d) That the short-term clinical education activity does not exceed eighty hours in a calendar year;
- (3) The name and qualifications of the North Dakota registered nurse who is responsible for providing the clinical education; and
- (4) The name of the person receiving the short-term clinical education and proof of a current, unencumbered license from another jurisdiction; and
- (5) The short-term clinical education nonrefundable two-year approval fee of one hundred dollars;
- c. A program leading to certification in a nursing specialty; or
  - d. Previously licensed nurses enrolled in a board-approved refresher course to update nursing skills.
2. This section shall not preclude programs of nursing or affiliating institutions from requiring licensure. A North Dakota license shall be required if the individual:
- a. Practices as a nurse, either voluntarily or for monetary compensation, during spare hours while enrolled in an educational program ~~of study~~; or
  - b. Exceeds eighty hours of short-term clinical nursing education in North Dakota per year.
3. North Dakota nurse licensure is not a legal requirement for a nurse licensed in another jurisdiction who:
- a. Is employed by a North Dakota health care agency but whose practice setting in another state requires attendance at general



facility orientation or continuing education or workshops or committee meetings that do not require policy development and approval;

b. Serves as a guest lecturer or short-term consultant for an education program or health care facility not to exceed forty hours per year or five working days per year; or

c. Serves as an evaluator for an accrediting organization.

**History:** Effective November 1, 1979; amended effective June 1, 1982; September 1, 1996; June 1, 2001; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-04(2), 43-12.1-08(20)

## CHAPTER 54-02-07

**54-02-07-01.1. Nursing practice— Grounds for discipline.** Practice inconsistent with acceptable standards of nursing practice by a licensee, applicant, or registrant means behavior that may place a client or other person at risk for harm or be in violation of the standards of nursing practice. Inconsistent practice includes incompetence by reason of negligence, patterns of behavior indicating the individual is unfit to practice nursing, as well as any of the following, or other behavior that demonstrates professional misconduct and includes the following:

1. Failure to provide nursing care because of client diagnosis, age, sex, race, religion, creed, or color.
2. ~~Abuse of~~ Cause or permit verbal, physical, emotional, or sexual abuse or harassment or intimidation to a client verbally, physically, emotionally, or sexually, client's family, or other health care provider.
3. Assign or delegate the responsibility for performance of nursing interventions to unqualified persons.
4. Failure to appropriately supervise persons to whom nursing interventions have been assigned or delegated.
5. Practice of nursing without sufficient knowledge, skills, or nursing judgment.
6. Performance of nursing interventions in a manner inconsistent with acceptable nursing standards.
7. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of board records or client, employee, or employer records.
8. ~~Diversion of supplies, equipment, or drugs for personal use or unauthorized use.~~ Failure to adhere to the licensee's, registrant's, or applicant's professional code of ethics or other applicable standards governing the individual's practice.
9. ~~Misuse or betrayal of a trust or confidence.~~ Misappropriation of property, including any real or personal property of the client, employer, or any other person or entity or failure to take precautions to prevent such misappropriation.
10. ~~Exploitation of a client or client's family for financial or personal gain.~~ Abandon or neglect a client who is in need of or receiving nursing care.

11. Failure to comply with mandatory requirements to report any violation of the Nurse Practices Act or duly promulgated rules, regulations, or orders of the board.
12. Practice nursing or assist in the practice of nursing while under the influence of alcohol or unauthorized drugs or while exhibiting impaired behavior.
13. Alter or falsify a license, registration, transcript, diploma, certificate, program of study, or continuing education document.
14. Use or permit the use of a nursing license or registration that has been fraudulently purchased, created, obtained, issued, counterfeited, or altered.
15. Failure to submit to a mental health, chemical dependency, or physical evaluation within the timeframe required by the board.
16. Violate any term of probation, condition, or limitation imposed by the board.
17. Failure to adhere to professional boundaries with a client or client's family.

**History:** Effective December 1, 1995; amended effective July 1, 1996; February 1, 1998; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**54-02-07-02. Definitions.** ~~Repealed effective June 1, 2002. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:~~

- ~~1. "Acts or omissions" that are violations of this chapter or are grounds for discipline, mean patterns of unsafe behavior, nursing practice deficits, failure to comply with acceptable standards of nursing practice, or grounds for discipline identified in chapter 43-12.1 or these rules:~~
- ~~2. "Client" means the recipient of nursing care, which may include an individual, family, group, or a community:~~
- ~~3. "Denial" means the board's refusal to issue a current license or registration upon application:~~
- ~~4. "Major incident" means an act or omission in violation of chapter 43-12.1 or these rules which indicates a licensee's or registrant's continuing to practice poses a risk of harm to the client or another person:~~

5. "Minor incident" means an act or omission in violation of chapter 43-12.1 or these rules which indicates a licensee's or registrant's continuing to practice does not pose a risk of harm to the client or another person.
6. "Probation" means issuance of a current license or registration marked "encumbered", and identification of specific requirements.
7. "Reprimand" means written communication to the licensee or registrant stating the board's concerns, and public notification of the licensee's or registrant's name, address, and reason for the reprimand.
8. "Revocation" means the board withdraws the license to practice nursing or nurse assistant registration for a specified length of time of no less than one year. If no specified length of time is identified by the board, revocation is perpetual.
9. "Suspension" means the board withholds the license to practice nursing or a nurse assistant registration for a specified length of time.

**History:** Effective August 1, 1988; amended effective October 1, 1989; March 1, 1992; December 1, 1995; February 1, 1998.

**General Authority:** NDCC 43-12.1-08(13)

**Law Implemented:** NDCC 43-12.1-14

**54-02-07-03.1. Reporting violations.** Protection of the public is enhanced by reporting of incidents that may be violations of North Dakota statutes or grounds for disciplinary action discipline by the board. Licensees, registrants, applicants, or citizens should use the following process to report any knowledge of the performance by others of acts or omissions that violate North Dakota Century Code chapter 43-12.1 or these rules:

1. **Minor incident.** If the act or omission meets the criteria for management of a minor incident, the applicant, licensee, or registrant should be aware of and follow the established policy within the practice setting for minor incidents. The established policy in the licensee's or registrant's practice setting should detect patterns of unsafe behavior that may be considered minor incidents and take corrective action resulting in safe practice.
  - a. A minor incident may be handled in the practice setting with a corrective action process if all the following factors exist:
    - (1) Potential risk of harm to others is low;
    - (2) There is no pattern of recurrence;
    - (3) The licensee or registrant exhibits evidence of remediation and adherence to standards of nursing practice; and

- (4) The corrective action process results in the licensee or registrant possessing the knowledge, skills, and abilities to practice nursing safely.
- b. When a decision is made that the act or omission by a licensee or registrant constitutes a minor violation, a report must be completed according to the practice setting's policy. Such report will be evidence of compliance with the requirement to report acts or omissions that are violations of this chapter or these rules to the board.
  - c. Other factors may be considered in determining the need to report such as the significance of the event in the particular practice setting, the situation in which the event occurred, and the presence of contributing or mitigating circumstances in the nursing care delivery system.
  - d. ~~When a licensee or registrant terminates from the practice setting, either voluntarily or by request, and is in a corrective action process involving nursing practice standards, a report should be made to the board.~~
  - e. Nothing in this rule is intended to prevent reporting of a minor incident or potential violation directly to the board.
2. **Major incident.** If the act or omission is a major incident or factors are present that indicate a duty to report, the licensee, applicant, or registrant and the licensee's, applicant's, or registrant's supervisor must contact the board office. The report should include requested information about the act or omission, the individuals involved, and the action taken within the practice setting.
3. ~~Citizens may report any knowledge of unsafe nursing practice to the board by contacting the board office by mail or telephone and providing the requested information.~~ **Termination of employment.** When a licensee, applicant, or registrant terminates from the practice setting, either voluntarily or by request, due to conduct that may be grounds for discipline under the Nurse Practices Act, a report shall be made to the board by the licensee, applicant, or registrant and by the licensee's, applicant's, or registrant's supervisor.

**History:** Effective December 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-11

54-02-07-04.1. Evidence and evaluation of treatment. The board may require the individual subject to an investigation to submit to a mental health.

chemical dependency, or physical evaluation if, during the course of the investigation, there is reasonable cause to believe that any licensee, registrant, or applicant is unable to practice with reasonable skill and safety or has abused alcohol or drugs.

1. Upon failure of the person to submit to the evaluation within thirty days of the request, the board may temporarily suspend the individual's license or registration or deny or suspend consideration of any pending application until the person submits to the required evaluation.
2. The licensee, registrant, or applicant shall bear the cost of any mental health, chemical dependency, or physical evaluation and treatment required by the board.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**54-02-07-05.1. Disposition.** Requests for investigation may result in:

1. ~~A formal complaint filed according to North Dakota Century Code chapter 28-32~~ Informal resolution and disposition by the board;
2. Formal resolution and disposition by the board. The board may use an administrative law judge to preside over the entire administrative proceeding and prepare recommended findings of fact, conclusions of law, and recommended order for board consideration, or the board may use a procedural hearing officer for the conduct of the hearing at which a majority of board members must be present at the hearing;
3. ~~Dismissal by the board for lack of evidence;~~
- ~~3:~~ 4. Referral to another agency; or
- 4: 5. Other action as directed by the board.

~~The board may use an administrative law judge to preside over the entire administrative proceeding and prepare findings of fact, conclusions of law, and order for board ratification, or the board may use a procedural hearing officer for the conduct of the hearing at which a majority of board members must be present at the hearing. If the board determines after investigation that the facts alleged in a potential violation report are without merit, the board may expunge the report and the investigative file from the record of the licensee or registrant.~~

**History:** Effective December 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-13

**54-02-07-05.2. Temporary suspension.** The executive director or the executive director's authorized designee may determine that temporary suspension of a license or registration is necessary when continued practice of the licensee or registrant would constitute a continuing and imminent threat to the public welfare.

1. When it appears by credible evidence that temporary suspension may be necessary, the executive director or the executive director's authorized designee may issue an order temporarily suspending the license or registration, specifying the statute or rule.
2. The order of temporary suspension shall take effect upon written notice to the licensee or registrant and shall remain in effect until either retracted, modified, or superseded by final disciplinary action by the board or upon agreement between the board and the licensee or registrant.
3. In cases when disciplinary action is imposed, the board may additionally order that the temporary suspension continue in effect until the later of expiration of the time permitted for appeal or termination of the appellate process.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**54-02-07-05.3. Voluntary surrender.** The board may accept the return and surrender of a license or registration without formal charges, notice, or opportunity of hearing if the licensee or registrant voluntarily surrenders the license or registration to the board and executes a statement that the individual does not desire to be licensed or registered.

An individual who is under investigation for violation of North Dakota Century Code chapter 43-12.1 may voluntarily surrender a license or registration to the board. Any license or registration surrender shall be deemed to be an admission of the alleged facts of any pending investigation or disciplinary matter.

1. A voluntary surrender deactivates the license or registration at the time of its relinquishment.
2. The voluntary surrender of a license or registration is disciplinary action and shall be reported and processed in the same manner as final disciplinary actions of the board.
3. Surrender of a license or registration shall not preclude the board from investigating or completing a disciplinary proceeding.

4. Individuals who surrender their licenses or registrations are not eligible to seek reinstatement of their license or registration for a minimum of two years and shall comply with the requirements for reinstatement of license or registration.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**54-02-07-06. Board decision - Revocation - Suspension.** The final decision will be adopted by a simple majority of the board and will include findings of fact, conclusions of law, and order. The decision of the board to impose or modify any restrictions upon the licensee or registrant or the licensee's or registrant's practice or to reinstate a license or registration will be communicated to the licensee or registrant in the form of a board order.

1. If the board issues a revocation order, it may also indicate in the order the specific action necessary for the reapplication for licensure or registration by the individual. The national nursing licensing examination may be waived by the board as a condition for the reissuance of a previously revoked license. The initial licensure or registration fee will be assessed for the reissuance of a revoked license or registration.
2. If the board issues a suspension order, it may also indicate the specific action necessary for the reissuance of the license or registration. An individual whose license or registration is suspended may request reinstatement by the board at any regularly scheduled meeting following the conclusion of the time period specified in the order. The current year's renewal fee will be required for reissuance of a suspended license or registration.

**History:** Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 28-32-13, 43-12.1-14

**54-02-07-07. ~~Costs and disbursements~~ Fees.**

- ~~1. Reasonable costs and disbursements to be recovered from the licensee or registrant following any hearing at which a license or registration is suspended, probated, or revoked, or at which a penalty fee or reprimand is issued by the board, shall include witness fees and reimbursement of the board's reasonable expenses. Costs and disbursements, including witness fees and reimbursement of the board's expenses in any administrative hearing or other proceeding, may be recovered from the licensee, applicant, or registrant following any disciplinary action.~~



2. Penalty fees for each separate violation as established by the board may be imposed against the licensee, applicant, or registrant following any disciplinary action.
3. If a witness is subpoenaed by the board to appear at the request of the licensee or registrant, the licensee or registrant is to deposit with the board sufficient funds to cover expenses for mileage, food, and lodging, and witness fees as allowed by state reimbursement policies plus twenty-five dollars per day for each day the witness is to appear.
- ~~3.~~ 4. In the case of any request by the licensee, applicant, or registrant for the subpoena by the board of an expert witness, sufficient funds will also be deposited with the board, prior to the issuance of such subpoena, to cover such expert witness fees. The deposit with the board of funds for witness fees and expenses must be made prior to the issuance of the subpoena. The request for the subpoena by the board of a witness for the licensee, applicant, or registrant must be made in writing.

**History:** Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 28-32-09, ~~43-12.1-14~~ 43-12.1-13

**54-02-07-08. Application for reinstatement.** Any person whose license or registration has been suspended or revoked by the board ~~may or voluntarily surrendered shall~~ apply in writing for reinstatement in the manner and form required by the board at the conclusion of the time period specified in the order. The burden of proof is on the licensee or registrant to prove to the satisfaction of the board that the condition that led to a sanction no longer exists or no longer has a material bearing on the licensee's professional ability or registrant's ability, or both. The board will consider the written application for reinstatement at the next regularly scheduled board meeting. If the board votes for reinstatement, the board may impose reasonable terms and conditions to be imposed prior to reinstatement, or as a condition of reinstatement. If the board denies reinstatement, reasons for denial must be communicated to the applicant.

**History:** Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**54-02-07-09. Practice without a license or registration.** ~~A licensee who applies for renewal of licensure shall present evidence to the board that the licensee has not been engaged in the practice of nursing without a current license. If evidence is received by the board that the individual has been practicing nursing without a current license, the individual will be offered an opportunity to enter into an administrative settlement for review. Entry into an administrative settlement shall~~

~~be required of an individual who admits, without other evidence of noncompliance of North Dakota Century Code chapter 43-12.1 and this chapter, to practicing without a license and desires to have the board issue a current license. The maximum fee the board may impose for practicing without a license is one hundred dollars plus ten dollars for each day or part of a day in which the licensee practiced without a license. The total fee imposed by the board may not exceed one thousand dollars. The administrative settlement is a written statement signed by the individual identifying the circumstances of the practice without a license, an agreement to accept a public reprimand, and an agreement to remit the fee. Upon receipt of the written statement and correct fee, the executive director or executive director's authorized designee may issue a current license to practice. The written statement must be presented to the board at the next regular meeting for acceptance. If the board does not accept the administrative settlement, the licensee shall have the opportunity for a disciplinary hearing as outlined in North Dakota Century Code chapter 28-32 and this chapter. An individual seeking to initiate licensure or registration or to renew a license or registration who has failed to complete the registration process within the required time period and has been found to have been practicing nursing or assisting in the practice of nursing without a current license or registration shall be assessed the following:~~

**1. Nondisciplinary action.**

- a. A person who has duly applied for licensure or registration or whose license or registration has expired and who has been practicing nursing or assisting in the practice of nursing thirty calendar days or less from the first date of practice without a current license or registration may be issued a license or registration by paying to the board the required late licensure or registration fee and penalty fee as established by the board and complying with any other requirements of the board.
- b. Upon compliance with board rules regarding licensure or registration and the remittance of all fees, a current license or registration shall be issued.

**2. Disciplinary action.**

- a. A person who has duly applied for licensure or registration or whose license or registration has expired and who has been practicing nursing or assisting in the practice of nursing more than thirty calendar days from the first date of practice without a current license or registration may be issued a license or registration by paying to the board the required late licensure or registration fee, penalty fee, duly complying with the imposition of any disciplinary sanction established by the board and complying with any other requirements of the board.

- b. Upon compliance with board rules regarding licensure or registration and the remittance of all fees, a current license or registration shall be issued.
- c. Disciplinary action for practicing without a license or registration may be expunged from the licensee's or registrant's record if no further violations occur within five years after the imposition of the board's order.

**History:** Effective August 1, 1988; amended effective September 1, 1994; December 1, 1995; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**54-02-07-11. Applicant statement.** If an applicant for initial or renewal of licensure or registry status reports an arrest, charge, or prior conviction of a crime other than a minor traffic violation, the applicant must provide the necessary information to determine the bearing upon that person's ability to serve as a licensed nurse or ~~nurse assistant~~ an unlicensed assistive person. Upon receipt of evidence of sufficient rehabilitation as outlined in North Dakota Century Code section 12.1-33-02.1, the license or ~~registry listing~~ registration may be issued. If the information does not substantiate the rehabilitation, the applicant may ask for a hearing pursuant to North Dakota Century Code chapter 28-32.

**History:** Effective December 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

**54-02-07-12. ~~Nurse assistants~~ Unlicensed assistive persons on board-recognized registries.** Individuals listed on a board-recognized registry must be considered to be on the board's registry for purposes of investigation of a ~~nurse assistant~~ an unlicensed assistive person and any board action that may result.

**History:** Effective December 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-14

## CHAPTER 54-02-08.1

**54-02-08.1-01. Definitions.** ~~Repealed effective June 1, 2002. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:~~

- ~~1. "Program of study" means the written agreement outlining the plan for coursework necessary to accomplish the required nursing degree.~~
- ~~2. "Proof of progression" means submission of a current program of study.~~
- ~~3. "Transitional practical nurse license" means the license issued to an individual who meets all of the requirements for licensure by endorsement as a licensed practical nurse except the educational requirements in North Dakota Century Code section 43-12.1-02.~~
- ~~4. "Transitional registered nurse license" means the license issued to an individual who meets all of the requirements for licensure by endorsement as a registered nurse except the educational requirements in North Dakota Century Code section 43-12.1-02.~~

**History:** ~~Effective December 1, 1995; amended effective September 1, 1997.~~

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09

**54-02-08.1-02. Initial transitional license.** Applicants for a transitional license must:

1. Submit a completed notarized application;
2. Submit verification of a licensing examination acceptable to the board;
3. Submit an official transcript directly from the nursing education program to the board office, with proof acceptable to the board of satisfactory completion of the original nursing education program; and
4. Pay the nonrefundable transitional license endorsement fee of seventy-five one hundred ten dollars; and,
- ~~5. Submit a notice of intent to complete the educational requirements for license by endorsement.~~

**History:** Effective December 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09

**54-02-08.1-03. Renewal.**

1. A transitional ~~practical~~ nurse license may be renewed if the licensee meets the requirements for four biennial renewal cycles, for a total of eight years, if the licensee meets according to chapter 54-02-05 and the following requirements:
  - a. Submit a completed biennial renewal application;
  - b. Pay the biennial nonrefundable renewal fee for transitional licensed practical nurse license of fifty one hundred dollars or for transitional registered nurse license of one hundred ten dollars; and
  - c. For each biennial renewal period, submit a current program of study from the nursing education program: Verification of completion of thirty contact hours of continuing education or two semester hours of academic credit that:
    - (1) Has been obtained within a two-year period of time immediately prior to the date of application for renewal;
    - (2) Has been obtained through a board-approved provider of continuing or nursing education; and
    - (3) Is appropriate subject matter as defined by board policy.
2. A transitional registered nurse license may be renewed for four biennial renewal cycles, for a total of eight years, if the licensee meets the following requirements All information concerning continuing education or academic credit submitted with a renewal application is subject to audit at the discretion of the board. Upon request of the board, the licensee shall submit verification of successful completion of:
  - a. ~~Submit a completed biennial renewal application;~~ Continuing education; or
  - b. ~~Pay the biennial renewal fee of sixty dollars; and~~ Academic credits.
  - c. ~~For each biennial renewal period, submit a current program of study from the nursing education program.~~
3. An individual who does not meet the requirements for renewal of the transitional license will be ineligible for renewal. An application for reinstatement will be accepted if accompanied by a current program of study. The transitional license may be renewed for no more than eight years unless approved by the board. the requirements for renewal according to chapter 54-02-05 are met and include the following:
  - a. Payment of applicable fees; and

b. Verification of successful completion of academic credit or of thirty hours of continuing education.

- ~~4. A petition for extension of renewal of a transitional license may be considered by the board. The licensee is responsible for submitting sufficient information to the board regarding progression in the educational program for determination if an extension of renewal eligibility is to be allowed.~~

**History:** Effective December 1, 1995; amended effective September 1, 1997; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09

**54-02-08.1-04. Transfer from transitional to permanent license. A registered nurse or practical nurse license will be issued when the licensee meets the educational requirements in North Dakota Century Code section 43-12.1-02 and submits the following:**

1. A completed application and nonrefundable fee; and
2. Official transcript with degree posted.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09

**ARTICLE 54-05**

**STANDARDS OF PRACTICE**

Chapter	
54-05-00.1	Definitions [Repealed]
54-05-01	Standards of Practice for Licensed Practical Nurses
54-05-01.1	Standards of Practice for Licensed Practical Nurses Providing Specialized Nursing Care [Repealed]
54-05-02	Standards of Practice for Registered Nurses
54-05-03	Registered Nurse Practice in Expanded Roles [Repealed]
54-05-03.1	Advanced Practice Registered Nurse
54-05-03.2	Specialty Practice Registered Nurse
54-05-04	Standards for Assignment and Delegation

**CHAPTER 54-05-00.1  
DEFINITIONS**

[Repealed effective June 1, 2002]

**CHAPTER 54-05-03.2**  
**SPECIALTY PRACTICE REGISTERED NURSE**

Section

<u>54-05-03.2-01</u>	<u>Statement of Intent</u>
<u>54-05-03.2-02</u>	<u>Board Authority - Title - Abbreviation</u>
<u>54-05-03.2-03</u>	<u>Standards of Practice for the Specialty Practice Registered Nurse</u>
<u>54-05-03.2-04</u>	<u>Initial Requirements for Specialty Practice Registered Nurse Licensure</u>
<u>54-05-03.2-05</u>	<u>Requirements for Specialty Practice Registered Nurse Licensure Renewal</u>
<u>54-05-03.2-06</u>	<u>Disciplinary Action Against Specialty Practice Registered Nurse Licensee</u>
<u>54-05-03.2-07</u>	<u>Encumbered License</u>

**54-05-03.2-01. 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. The 2001 legislative assembly defined the education requirements for the specialty practice registered nurse.

The scope of practice for a registered nurse with specialty 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 specialty practice roles provide care to the fullest extent of their scope of practice. The specialty practice registered nurse retains the responsibility and accountability for that scope of practice and is ultimately accountable to the client within the Nurse Practices Act.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(7)

**54-05-03.2-02. Board authority - Title - Abbreviation.** The board may authorize specialty nursing practice to a registered nurse who has submitted evidence of knowledge, skills, and abilities in a defined area of nursing practice. Each specialty practice registered nurse may use the applicable category designation for purposes of identification and documentation. No person may use the specialty practice registered nurse title without the express authority of the board to do so.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(7)



**54-05-03.2-03. Standards of practice for the specialty practice registered nurse.**

1. The standards of practice for the registered nurse found in chapter 54-05-02 are the core standards of practice for all categories of specialty practice registered nurses.
2. In addition to the core registered nurse standards of practice, each specialty practice registered nurse shall practice according to national standards acceptable to the board for specialty practice registered nurses.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(7)

**54-05-03.2-04. Initial requirements for specialty practice registered nurse licensure.** The board of nursing shall restrict the issuance of the specialty license to the registered nurse who has submitted evidence of specialization within a defined area of nursing practice.

Applicants for specialty practice registered nurse licensure must:

1. Possess a current license to practice as a registered nurse in North Dakota;
2. Submit evidence of experiential expertise gained through the clinical aspect of coursework or employment or submit evidence of additional educational preparation in continuing education programs or formal education in a board-approved program;
3. Submit evidence of current certification by a national certifying body 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 for review and approval by the board; and
6. Submit other activities as approved by the board.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(7)

**54-05-03.2-05. Requirements for specialty practice registered nurse licensure renewal.** The specialty license is valid for the same period of time as the applicant's registered-nurse license. Applicants for renewal of the license must:

1. Renew the registered nurse license;
2. Complete the specialty practice registered nurse license renewal application;
3. Pay the licensure renewal fee of fifty dollars;
4. Submit evidence of current certification; and
5. Submit a scope of practice statement for review and approval by the board.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(7)

**54-05-03.2-06. Disciplinary action against specialty practice registered nurse licensee.** The specialty practice registered nurse licensee may be subject to discipline 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; or
2. Failed to maintain national nursing certification.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(7)

**54-05-03.2-07. Encumbered license.** Encumbrances placed on the specialty practice registered nurse license will also be placed on the registered nurse license.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-09(7)

## CHAPTER 54-05-04

**54-05-04-01. Statement of intent.** These rules govern the provision, administration, and management of nursing care by licensed nurses and by ~~nurse assistants~~ unlicensed assistive persons providing nursing services. Licensed nurses are directly accountable and responsible to clients for the nature and quality of all nursing care rendered. Licensed nurses provide nursing care through a variety of roles including:

1. The direct provision of care;
2. The indirect provision of care through administering, managing, and supervising the practice of nursing;
3. The teaching of health care practice to individuals, families, and groups; and
4. Collaboration and consultation with other health professionals in the management of health care.

~~Licensed nurses provide nursing care through acute practice, long-term care practice, and community-based practice. Licensed nurses are directly accountable and responsible to clients for the nature and quality of all nursing care rendered.~~

Registered nurses practice nursing independently and interdependently through the application of the nursing process. Registered nurses also practice nursing dependently through the execution of diagnostic or therapeutic regimens prescribed by licensed practitioners. The administration and management of nursing by registered nurses is an independent and interdependent practice and includes assigning and delegating nursing interventions that may be performed by others.

Licensed practical nurses practice nursing dependently under the direction of registered nurses, advanced practice registered nurses, or licensed practitioners through the application of nursing process and the execution of diagnostic or therapeutic regimens prescribed by licensed practitioners. The administration and management of nursing by licensed practical nurses includes assigning and delegating nursing interventions that may be performed by others.

The registered nurse is responsible for the nature and quality of nursing care that a client receives. Unlicensed assistive persons complement the licensed nurse in the performance of nursing interventions but may not substitute for the licensed nurse. Unlicensed assistive persons are responsible to the licensed nurse to assist with client care rather than be independently accountable to the client.

**History:** Effective February 1, 1998; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-02(6) 43-12.1-02(5)

**Law Implemented:** NDCC 43-12.1-08(6)

**54-05-04-03. Delegation process for nursing interventions.** A licensed nurse may delegate a nursing intervention to a competent ~~nurse assistant~~ unlicensed assistive person if the licensed nurse utilizes a decisionmaking process to delegate in a manner that protects public health, welfare, and safety. Such a process must include:

1. Assessment of clients and human and material resources by:
  - a. Identifying the needs of the client;
  - b. Consulting the plan of care;
  - c. Considering the circumstances and setting; and
  - d. Assuring the availability of adequate resources, including supervision.
2. Planning for delegation that must include:
  - a. Criteria for nursing interventions that may be delegated and includes:
    - (1) The nature of the specific nursing intervention, its complexity, and the knowledge and skills required to perform the intervention;
    - (2) The results of the intervention are predictable;
    - (3) A determination that the potential risk to client is minimal; and
    - (4) A standard and unchangeable procedure which does not require any exercise of independent nursing judgment.
  - b. Selection and identification of ~~nurse assistants~~ unlicensed assistive persons to whom nursing interventions may be delegated. Licensed nurses who assess and identify the ~~nurse assistant's~~ unlicensed assistive person's training, experience, and competency to provide a selected nursing intervention shall:
    - (1) Teach the nursing interventions; or
    - (2) Verify the unlicensed assistive person's competency to perform the nursing intervention; and
    - (3) Observe the nurse assistant's unlicensed assistive person's demonstration of current competence to perform the nursing intervention; and

(3) (4) Document the ~~nurse assistant's~~ unlicensed assistive person's competency to perform the nursing intervention.

c. Selection and identification of the methods of supervision and the licensed nurses responsible to provide supervision. The method of supervision and the frequency of assessment, inspection, and evaluation must be determined by, but not limited to the following:

- (1) The willingness and ability of the client to be involved in the management of the client's own care;
- (2) The stability of the client's condition;
- (3) The experience and competency of the ~~nurse assistant~~ unlicensed assistive person providing the nursing intervention; and
- (4) The level of nursing judgment required for the delegated nursing intervention.

3. Implementation of the delegated nursing interventions by providing direction and supervision.

a. Direction must include:

(1) The ~~nurse assistant's~~ unlicensed assistive person's access to written instructions on how the nursing intervention is to be performed, including:

- (a) Reasons why the nursing intervention is necessary;
- (b) Methods used to perform the nursing intervention;
- (c) Documentation of the nursing intervention; and
- (d) Observation of the client's response.

(2) The licensed nurse's:

- (a) Monitoring to assure compliance with established standards of practice and policies; and
- (b) Evaluating client responses and attainment of goals related to the delegated nursing intervention.

b. Supervision may be provided by the delegating licensed nurse or by other licensed nurses. The degree and method of supervision

required must be determined by the licensed nurse after an evaluation of the appropriate factors involved, including:

- (1) The number of clients for whom nursing interventions are delegated;
- (2) The stability of the condition of the client;
- (3) The training and ~~capability~~ competency of the ~~nurse assistant~~ unlicensed assistive person to whom the nursing intervention ~~was~~ is delegated;
- (4) The nature of the nursing intervention delegated; and
- (5) The proximity and availability of the licensed nurse when the nursing intervention is performed.

4. Evaluation of the delegated nursing interventions through:

- a. Measurement of the client's response and goal attainment related to the delegated interventions;
- b. Modification of nursing interventions as indicated by client's response;
- c. Evaluation of the performance of the intervention by the ~~nurse assistant~~ unlicensed assistive person;
- d. Feedback from ~~nurse assistant~~ unlicensed assistive person; and
- e. Provision of feedback to ~~nurse assistant~~ unlicensed assistive person.

**History:** Effective February 1, 1998; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-02(6) 43-12.1-02(5)

**Law Implemented:** NDCC 43-12.1-08(6)

**54-05-04-04. Accountability and responsibility for delegation process.**  
It is the responsibility of the licensed nurse delegating the intervention to determine that the unlicensed assistive person is able to safely perform the nursing intervention.

1. The nurse administrator shall:

- a. Select nursing service delivery models for the provisions of nursing care which do not conflict with this chapter.

- b. Assess the health status of groups of clients, analyze the data, and identify collective nursing care needs, priorities, and necessary resources.
- c. Establish training, supervision, and competency requirements of all individuals providing nursing care. The nurse administrator shall identify nursing personnel by a position title ~~and~~, job description and qualifications, and includes licensed nurse delegation to technician. A licensed nurse may delegate an intervention to a technician who may perform limited nursing functions within the ordinary, customary, and usual roles in the individual's field provided the individual:
  - (1) Is enrolled in or has completed a board-recognized formal training program;
  - (2) Is registered or certified by appropriate board-recognized national bodies; or
  - (3) Has completed other education that may be approved by the board.
- d. Communicate nursing service delivery models and training and competency requirements to nursing personnel.
- e. Be accountable to provide adequate human and material resources to carry out the delegation process.

2. The registered nurse shall:

- a. Assess the client's individual health status, analyze the data, and identify the client's specific goals, nursing care needs, and necessary interventions.
- b. Instruct the unlicensed assistive person using step-by-step directions ~~on how to perform in the delegated~~ nursing intervention and verify the unlicensed assistive person's competence to perform the nursing intervention on an individual and client-specific basis.
- c. ~~Assess, verify, and identify the nurse assistant's competency on an individual and client specific basis.~~
- d. Determine the method of supervision on an individual basis and identify any other licensed nurses who have been assigned the responsibility for supervision.

- e. ~~d.~~ Communicate decisions regarding selected interventions and the conditions of supervision to licensed nurses responsible to provide supervision and to ~~nurse assistants~~ unlicensed assistive persons responsible to provide nursing interventions as appropriate and on an individual basis.
- f. ~~e.~~ Retain accountability for individual delegation decisions and evaluation of the outcomes.

3. The licensed practical nurse shall:

- a. Contribute to the assessment of client's individual health status, nursing care needs, and interventions.
- b. Assist in instructing ~~nurse assistants on how to perform~~ unlicensed assistive persons in the delegated nursing interventions intervention and verify the unlicensed assistive person's competence to perform the nursing intervention on an individual and client-specific basis.
- c. ~~Assist in assessing, verifying, and identifying the nurse assistant's competency on an individual and client-specific basis.~~
- d. Assist in the supervision on an individual basis.
- e. ~~d.~~ Communicate decisions regarding selected interventions to the ~~nurse assistant~~ unlicensed assistive person responsible to provide nursing interventions as appropriate and on an individual basis.
- f. ~~e.~~ Retain accountability for individual delegation decisions and evaluation of the outcomes.

**History:** Effective February 1, 1998; amended effective June 1, 2002.

**General Authority:** NDCC ~~43-12.1-02(6)~~ 43-12.1-02(5)

**Law Implemented:** NDCC 43-12.1-08(6)

**54-05-04-05. Interventions that may not be delegated.** Interventions that require nursing knowledge, skill, and judgment may not be delegated by the licensed nurse to ~~a nurse assistant~~ an unlicensed assistive person. These activities include, but are not limited to:

1. Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or followup.
2. Development of nursing diagnosis and care goals.
3. Formulation of the plan of nursing care.



4. Evaluation of the effectiveness of the nursing care provided.
5. Teaching except for that related to promoting independence in activities of daily living.
6. Counseling, except that the ~~nurse assistant~~ unlicensed assistive person may be instructed to recognize and report basic deviations from healthy behavior and communication patterns, and may provide listening, empathy, and support.
7. Coordination and management of care, including collaborating, consulting, and referring.
8. Triage.
9. Medication administration may not be delegated unless the ~~nurse assistant~~ unlicensed assistive person has met the requirements of chapter 54-07-05. The exception is when a licensed nurse specifically delegates to a specific ~~nurse assistant~~ unlicensed assistive person the administration of a specific medication for a specific client.
10. Receiving or transmitting verbal or telephone orders.

**History:** Effective February 1, 1998; amended effective June 1, 2002.

**General Authority:** NDCC ~~43-12.1-02(6)~~ 43-12.1-02(5)

**Law Implemented:** NDCC 43-12.1-08(6)

## CHAPTER 54-07-01

**54-07-01-01. Statement of intent.** The 1991 legislative assembly enacted legislation declaring that it is the policy of this state to regulate through the board of nursing the practice of nursing, those engaged in licensed nursing practice, and those persons who assist in the practice of nursing. Other governmental agencies, through implementation of federal standards and regulations, may also be charged with the regulation of those who assist in the practice of nursing. It is the intent of the board to recognize other state registries that may exist, rather than duplicating those services. These rules govern the provision, administration, and management of nursing interventions by licensed nurses and nursing interventions delegated to ~~nurse assistants~~ unlicensed assistive persons. Licensed nurses are accountable and responsible to clients for the nature and quality of nursing interventions. In organizations where direct nursing care is not provided as a specific service, the provisions of this article do not apply.

**History:** Effective November 1, 1992; amended effective February 1, 1998; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(15)

**54-07-01-02. Definitions.** Repealed effective June 1, 2002. ~~The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:~~

1. ~~"Accountability" means being responsible.~~
  - a. ~~Licensed nurse accountability means being responsible for decisions in the context of assignment and delegation and for the action of self and for the resultant client outcomes.~~
  - b. ~~Nurse assistant accountability means being responsible for the action of self.~~
2. ~~"Activities of daily living" includes transferring, ambulating, repositioning, exercising, toileting, feeding, and assistance with self-administered medications and personal care. Personal care includes bathing, hair care, nail care, shaving, dressing, and oral care.~~
3. ~~"Authority" means legal authority to provide nursing care granted through licensure as a registered nurse, licensure as a practical nurse, or through delegation of nursing interventions from the licensed nurse.~~
4. ~~"Competence" means the nurse assistant having the required knowledge, skills, and ability to perform nursing interventions, includes:~~
  - a. ~~Utilizing effective communication;~~

- b. ~~Collecting basic objective and subjective data;~~
  - c. ~~Performing selected nursing interventions safely, accurately, and according to standard procedures; and~~
  - d. ~~Seeking guidance and direction when appropriate.~~
5. ~~"Consultative nursing" means that the licensed nurse provides guidance and information as a participant of the interdisciplinary team but is not individually responsible to direct the plan of care for the client.~~
  6. ~~"Delegation" means the transfer of authority and accountability for the performance of selected nursing interventions from a licensed nurse to a nurse assistant.~~
  7. ~~"Licensed nurse" means a person licensed pursuant to North Dakota Century Code chapter 43-12.1 and North Dakota Administrative Code title 54.~~
  8. ~~"Medication administration" means the delivery of medication by a licensed nurse or an individual directly delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.~~
  9. ~~"Nurse assistant registry" means a listing of all persons who are authorized by the board or included on another state registry which has been recognized by the board to perform nursing interventions delegated and supervised by a licensed nurse.~~
  10. ~~"Nursing intervention" means the initiation and completion of client-focused actions necessary to accomplish the goals defined in the plan of care.~~
  11. ~~"Organization policy" means a written plan for the provision of nursing care.~~
  12. ~~"Supervision" means maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of the client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing nursing care.~~

**History:** ~~Effective November 1, 1992; amended effective September 1, 1994; February 1, 1998.~~

**General Authority:** ~~NDCC 43-12.1-08~~

**Law Implemented:** ~~NDCC 43-12.1-08(6)~~

**54-07-01-03. Recognition of other state registries.** The board will acknowledge placement on other state registries in lieu of the ~~nurse-assistant~~ unlicensed assistive person registry. Criteria for recognition of other state registries is as follows:

1. The registry is open to the public during normal business hours.
2. The registry contains information about the individual that meets or exceeds the requirements for the ~~nurse-assistant~~ unlicensed assistive person registry.
3. The registry provides a mechanism for removal of the individual for cause, or marking of the registry of disciplinary action by the board.
4. The agency operating the registry has submitted sufficient documentation to the board of nursing to verify compliance with these requirements.

**History:** Effective November 1, 1992; amended effective September 1, 1994; December 1, 1995; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(15)

## CHAPTER 54-07-02

**54-07-02-01. ~~Nurse assistant~~ Unlicensed assistive person registry.** The board shall establish and maintain a ~~nurse assistant~~ an unlicensed assistive person registry. The board shall enter identifying demographic information on each individual names on the ~~nurse assistant~~ unlicensed assistive person registry upon receipt of information required.

1. An applicant for initial registry status shall submit a completed application and fee that includes an affidavit of competency determination by the employer or licensed nurse. A national nurse assistant competency evaluation testing program may be used in lieu of the employer or licensed nurse validation of competency.
2. Upon receipt of the required information, and a fee of ten dollars, an initial registry listing card for a period of twenty-four months will be sent to the ~~nurse assistant~~ unlicensed assistive person.
3. Registry listing is valid for twenty-four months and will be subject to renewal before the last day of the twenty-fourth month. Registry listing renewal requires verification of continued competency by the employer or licensed nurse or completion of a national nurse assistant competency evaluation program and proof that the ~~nurse assistant~~ unlicensed assistive person functions under the direction of a licensed nurse.
4. The renewal fee for the ~~nurse assistant~~ unlicensed assistive person will be ten dollars.

**History:** Effective November 1, 1992; amended effective September 1, 1994; February 1, 1998; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(15)

**54-07-02-02.1. ~~Nurse assistant~~ Unlicensed assistive person registry status.**

1. ~~Nurse assistants~~ Unlicensed assistive persons who carry out delegated nursing interventions must hold current registry status.
2. Individuals holding current registry status on a board-recognized registry meet this requirement.
3. Individuals who are employed to perform nursing interventions delegated by a licensed nurse who have never held registry status have four months from the date of initial employment to achieve registry status.

4. A lapsed registry status may be reinstated by submission of the required competency verification by the employer or completion of a national nurse assistant competency evaluation program and payment of the required fee.

**History:** Effective February 1, 1998; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(15)

## CHAPTER 54-07-03.1

**54-07-03.1-01. Minimum competence requirements for nurse assistants unlicensed assistive persons.** The ~~nurse assistant~~ unlicensed assistive person shall demonstrate competencies in the following areas as appropriate to the job expectations:

1. Infection control.
2. Safety and emergency procedures.
3. Collection and documentation of basic objective and subjective client data.
4. Activities of daily living.
5. Understanding the agency's standards, policies, and procedures.
6. Decisionmaking skills.
7. Client rights.
8. Communication and interpersonal skills.
9. Client cognitive abilities and age-specific needs.
10. The ~~nurse assistant~~ unlicensed assistive person may not be delegated medication administration unless the ~~nurse assistant~~ unlicensed assistive person has met the requirements of chapter 54-07-05. The exception is when a licensed nurse specifically delegates to a specific ~~nurse assistant~~ unlicensed assistive person the administration of a specific medication for a specific client.

**History:** Effective February 1, 1998; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

**54-07-03.1-02. Process for teaching nursing interventions.** Nursing interventions must be taught to ~~a nurse assistant~~ an unlicensed assistive person or to a group of ~~nurse assistants~~ unlicensed assistive persons using the following process:

1. Provide step-by-step directions on how to perform the nursing interventions.
2. Demonstrate the proper method used to perform the nursing intervention.

3. Observe the ~~nurse assistant~~ unlicensed assistive person performing the nursing intervention to ensure the ~~nurse assistant~~ unlicensed assistive person performs the intervention safely and accurately.
4. Document the ~~nurse assistant's~~ unlicensed assistive person's competency to perform the nursing intervention.
5. Provide written instructions for performance of the nursing intervention for the ~~nurse assistant's~~ unlicensed assistive person's use as a reference.

The ~~nurse assistant~~ unlicensed assistive person may not have to be taught a nursing intervention again for each client provided the ~~nurse assistant's~~ unlicensed assistive person's knowledge and skill have been maintained and are correct. The licensed nurse shall teach the ~~nurse assistant~~ unlicensed assistive person any difference in a nursing intervention due to idiosyncrasies of the client which may vary the nursing intervention. The ~~nurse assistant~~ unlicensed assistive person shall perform the delegated nursing intervention only on the client for whom the delegation is specified, exactly as taught, and in accordance with the organization's policies.

**History:** Effective February 1, 1998; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

**54-07-03.1-03. Licensed nurse delegation to ~~nurse assistants~~ unlicensed assistive persons.** A licensed nurse may delegate a nursing intervention to ~~a nurse assistant~~ an unlicensed assistive person only if all the conditions for delegation set forth in chapter 54-05-04 and this article are met.

**History:** Effective February 1, 1998; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

**54-07-03.1-04. ~~Nurse assistant's~~ Unlicensed assistive person's contribution to the nursing process.** The ~~nurse assistant~~ unlicensed assistive person as delegated by a licensed nurse:

1. Contributes to the assessment of the health status of clients, including interactions of clients with family members or group members by:
  - a. Collecting basic subjective and objective data from observations and interviews. The data to be collected is identified by the licensed nurse.
  - b. Reporting and recording the collected data.



2. Identifies basic signs and symptoms of deviations from normal health status and provides basic information which licensed nurses use in identification of problems and needs.
3. Contributes to the development of the plan of care for individuals by reporting basic data.
4. Participates in the giving of direct care by:
  - a. Assisting with activities of daily living and encouraging self-care;
  - b. Providing comfort measures and emotional support to the client whose condition is stable and predictable;
  - c. Assisting with basic maintenance and restorative nursing;
  - d. Providing Supporting a safe and healthy environment;
  - e. Documenting and communicating completion of delegated nursing interventions and client responses; and
  - f. Seeking guidance and direction when appropriate.
5. Contributes to the evaluation by:
  - a. Documenting and communicating client responses; and
  - b. Assisting with collection of data.

**History:** Effective February 1, 1998; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(6)

## CHAPTER 54-09-01

**54-09-01-01. Statement of intent.** The board recognizes that problems resulting from the diseases of chemical dependency as well as psychiatric or physical disorders may impair a nurse's ability to safely practice nursing. Nurses who develop such diseases or disorders ~~can~~ may be able to, with appropriate treatment, be assisted with recovery and return to the practice of nursing. It is the intent of the board that nurses who are chemically dependent or suffer psychiatric or physical disorders may be offered an opportunity to seek evaluation and treatment and return to or continue the practice of nursing in a manner which benefits the public health, safety, and welfare, as well as aids in the nurse's recovery from such diseases and disorders. The board supports a nurse monitoring program for nurses who would otherwise be charged with violating the Nurse Practices Act due to chemical dependency, or psychiatric or physical disorders. The board will cooperate with employers of nurses duly admitted to the program in order to facilitate the nurse's ability to practice safely while participating in the program.

**History:** Effective September 1, 1996; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(12)

**54-09-01-02. Definitions.** Repealed effective June 1, 2002. ~~The terms in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:~~

- ~~1. "Committee" refers to the nurse advocacy committee composed of three board members and the nurse advocacy program consultant. The purpose of the committee is to review and recommend policy for the nurse advocacy program to the board.~~
- ~~2. "Consultant" is a registered nurse employed by the board to manage the nurse advocacy program. The program consultant must hold a current unencumbered North Dakota registered nurse license and be qualified through education and experience.~~
- ~~3. "Impaired" means the ability to practice nursing safely has been affected by the use or abuse of alcohol or other drugs or psychiatric or physical disorders.~~
- ~~4. "Program" means the nurse advocacy program administered by the board and set out in this chapter permitting nurses with chemical dependency, or psychiatric or physical disorders to seek treatment and participate in monitored practice as an alternative to formal disciplinary action by the board.~~
- ~~5. "Program agreement" means an individualized written agreement between the nurse and the nurse advocacy program. The agreement~~

must include the criteria for entrance and the terms and conditions for successful completion of the nurse advocacy program.

**History:** ~~Effective September 1, 1996.~~

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(12)

## CHAPTER 54-09-02

### **54-09-02-01. Nurse advocacy program management and administration.**

The program is managed and administered by the consultant who shall:

1. Serve as a member of the nurse advocacy committee.
2. Review and manage the information provided by the nurse related to compliance with the program agreement.
3. Serve as a liaison between the program and treatment providers, employers, and program participants.
4. Provide information and education regarding the program.
5. Report progress of the program and statistical information to the board.

**History:** Effective September 1, 1996; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(12)

**54-09-02-02. Nurse advocacy program.** When a person licensed to practice nursing seeks treatment for the diseases of chemical dependency, or psychiatric or physical disorders that may otherwise lead to formal disciplinary action, the board may abstain from taking such formal disciplinary action if the licensee can be treated effectively for such diseases or disorders and that there ~~is~~ reasonably exists no danger to the public health or the board may order a nurse to participate in the program. The board shall:

1. Establish ways and means to identify nurses qualified to enter the program and monitor nurses participating in the program;
2. Establish alternatives to traditional disciplinary procedures of the board; and
3. Establish criteria for the acceptance, denial, and termination of nurses in the program. Only nurses qualified for the program and approved by the consultant may participate in the program.

Nurses who are not being investigated or currently monitored by the board, but who believe the offerings of the program may aid them personally or professionally, may voluntarily participate in the program to lend support to their recovery process.

**History:** Effective September 1, 1996; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(12)

**54-09-02-03. Eligibility.**

1. Any nurse who self-refers requesting access to the program or is reported to the board for a violation of the Nurse Practices Act and whose nursing practice may be affected by addiction to or abuse of alcohol or other drugs, or psychiatric or physical disorders will be advised of the opportunity for participation in the monitoring program, under its terms and conditions, unless the board determines that it is in the best interest of the public that participation in the program not be offered.
2. ~~The~~ A nurse offered participation in the program will be advised of the program procedures, requirements, and implications of noncompliance with the program. If admitted to participate in the program, the nurse must agree, in writing, to follow all requirements of the program.
3. The consultant may grant participation in the program to a nurse after interviewing the nurse and determining that all requirements for admission to the program have been or will be duly met by the nurse seeking entrance into the program.
4. The nurse will enter the program after signing the program agreement.
5. The nurse will pay a thirty dollar per month fee to participate in the nurse advocacy program unless for good cause the fee is waived or reduced by the board.

**History:** Effective September 1, 1996; amended effective February 1, 1998; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(12)

**54-09-02-04. Causes for termination from the program.** The consultant may terminate a nurse's participation in the program for any of the following reasons:

1. Successful completion of the program ~~designated by the policies developed by the board.~~
2. Failure to comply with any aspect of the program. Such failure may result in termination of the nurse's participation in the program and referral to the board for disciplinary procedures action.
3. Information is received, which after investigation by the consultant, indicates the participant may have violated a provision of the law or

rules governing the practice of nursing, in which case the nurse ~~will~~ may be referred to the board for disciplinary ~~procedures~~ action.

**History:** Effective September 1, 1996; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(12)

**54-09-02-05. Confidentiality.**

1. All program records and information related to a nurse's treatment for chemical dependency, psychiatric, or physical disorders as well as program monitoring is are confidential ~~only as may be permitted by law unless the nurse is ordered by the board to participate in the program.~~
2. All program records shall be maintained in a secure storage area.
3. By signing the program agreement, the program participant authorizes communication between the program consultant and the employers, the treatment professionals, appropriate health care professionals, identified sponsors, the drug testing company and its agents, and any other individuals involved in the facilitation and monitoring of the program.
4. After the consultant has determined that a nurse has duly completed the program requirements, the consultant shall purge and destroy such records pertaining to the nurse's participation in the program, as permitted by law and the board's records retention schedule.
- 3- 5. Information or records received by the board prior to acceptance of the applicant into the program or which ~~exist regarding~~ relate to a nurse terminated from the program under subsections 2 and 3 of section 54-09-02-04 may be utilized by the board in any disciplinary proceedings instituted against the participant.
6. Information otherwise confidential may be shared with the administrator of a comparable program in another jurisdiction when necessary to monitor participation by the nurse under section 54-09-02-06.

**History:** Effective September 1, 1996; amended effective February 1, 1998; June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(12)

**54-09-02-06. Other jurisdictions.**

1. Participation in an approved impaired nurse program in another jurisdiction may be accepted, in whole or part by the consultant as participation in the program, providing that ~~that~~ such comparable program meets the requirements of the board's program.
2. The ~~board will~~ consultant may provide information to other jurisdictions when licensing information is requested ~~for a nurse who has not completed the program, or, if the nurse has completed the program, the dates of entry and completion.~~
3. By signing the program agreement, the program participant authorizes communication between the program consultant and other impaired nurse programs to coordinate facilitation and monitoring of the program.

**History:** Effective September 1, 1996; amended effective June 1, 2002.

**General Authority:** NDCC 43-12.1-08

**Law Implemented:** NDCC 43-12.1-08(12)





**TITLE 61**  
**STATE BOARD OF PHARMACY**



MAY 2002

**CHAPTER 61-04-11**  
**ADMINISTRATION OF MEDICATIONS AND IMMUNIZATIONS**

Section

<u>61-04-11-01</u>	<u>Definitions</u>
<u>61-04-11-02</u>	<u>Qualifications Established to Obtain Certificate of Authority</u>
<u>61-04-11-03</u>	<u>Procedures to Obtain Certificate of Authority</u>
<u>61-04-11-04</u>	<u>Requirements of Physician or Nurse Practitioner Order for a Pharmacist to Administer Injections</u>
<u>61-04-11-05</u>	<u>Requirements of Written Protocol</u>
<u>61-04-11-06</u>	<u>Requirements of Records and Notifications</u>
<u>61-04-11-07</u>	<u>Location of Administration by Injection</u>
<u>61-04-11-08</u>	<u>Policy and Procedural Manual</u>

**61-04-11-01. Definitions.** For purposes of this chapter:

1. "Authorized pharmacist" means a pharmacist who has successfully completed a board-approved course of study pertaining to the injectable administration of drugs and maintains continuing competency according to rules adopted by the board.
2. "Certificate of authority" means documentation provided by the board to an authorized pharmacist, which must be displayed in the pharmacy at which the pharmacist is practicing.
3. "Written protocol" means a standing medical order between a physician or nurse practitioner and an authorized pharmacist which contains information required by board rules.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 43-15-10

**Law Implemented:** NDCC 43-15-10, 43-15-31.5

**61-04-11-02. Qualifications established to obtain certificate of authority.**

A pharmacist must possess the following qualifications in order to obtain a certificate of authority from the board:

1. Obtain and maintain a license to practice pharmacy issued by the North Dakota state board of pharmacy;
2. Successfully complete a board-approved twenty-hour course of study and examination pertaining to the administration of medications by injection, which includes the current guidelines and recommendations of the centers for disease control and prevention. The course of study must be administered by an approved provider and consist of study material and hands-on training in techniques for administering injections. The course must require testing and completion with a passing score. The provider of the course of study shall provide successful participants with a certificate of completion. A copy of said certificate must be mailed to the state board of pharmacy offices and placed in the pharmacist's permanent file. The course of study must include, at a minimum:
  - a. Basic immunology, including the human immune response;
  - b. The mechanism of immunity, adverse effects, dose, and administration schedule of available vaccines;
  - c. Vaccine-preventable diseases;
  - d. Current immunization guidelines and recommendations of the centers for disease control and prevention;
  - e. Vaccine storage and management;
  - f. Management of adverse events due to the administration of medications by injection, including identification, appropriate response, documentation, and reporting;
  - g. Patient education on the need for immunizations;
  - h. Informed consent;
  - i. Physiology and techniques for subcutaneous, intradermal, and intramuscular injection; and
  - j. Recordkeeping requirements established by law and rules or established standards of care;
3. Obtain and maintain current certification in cardiopulmonary resuscitation or basic cardiac life support;

4. Complete an application process adopted by the board and provide required documentation; and
5. Maintain continuing competency to retain the certificate of authority. A minimum of six hours of the thirty-hour requirement for continuing education, every two years, must be dedicated to this area of practice.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 43-15-10

**Law Implemented:** NDCC 43-15-10, 43-15-31.5

**61-04-11-03. Procedures to obtain certificate of authority.** An authorized pharmacist shall provide the board with a copy of a certificate of completion from a board-approved course, a copy of current certification in cardiopulmonary resuscitation or basic cardiac life support, and other information required on a form supplied by the board. If requirements are met, the board shall issue a certificate of authority that shall be valid for two years. In order to renew the certificate, the pharmacist shall submit evidence of six hours of continuing education dedicated to this area of practice.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 43-15-10

**Law Implemented:** NDCC 43-15-10, 43-15-31.5

**61-04-11-04. Requirements of physician or nurse practitioner order for a pharmacist to administer injections.** The order must be written, received electronically or if received orally be reduced to writing, and must contain at a minimum the:

1. Identity of the physician or nurse practitioner issuing the order;
2. Identity of the pharmacist who is being authorized to administer the injection;
3. Identity of the patient to receive the injection;
4. Identity of the medication or vaccine, and dose, to be administered; and
5. Date of the original order and the dates or schedule, if any, of each subsequent administration.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 43-15-10

**Law Implemented:** NDCC 43-15-10, 43-15-31.5

**61-04-11-05. Requirements of written protocol.** A physician or nurse practitioner may prepare a written protocol governing the administration of

medications by injection with an authorized pharmacist for a specific period of time or purpose. The written protocol may be valid for a time period not to exceed two years, subject to earlier withdrawal by the physician or nurse practitioner. The protocol must contain the:

1. Identity of the participating physician or nurse practitioner and the pharmacist;
2. Identity of the immunization or vaccination which may be administered;
3. Identity of the patient or groups of patients to receive the authorized immunization or vaccination;
4. Identity of the authorized routes and sites of administration allowed;
5. Identity of the course of action the pharmacist shall follow in the case of reactions following administration;
6. Identity of the location at which the pharmacist may administer the authorized immunization or vaccination; and
7. Recordkeeping requirements and procedures for notification of administration.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 43-15-10

**Law Implemented:** NDCC 43-15-10, 43-15-31.5

**61-04-11-06. Requirements of records and notifications.** A pharmacist administering by injection shall meet the following recordkeeping and notification requirements:

1. Notification of administration must be made to the ordering physician or nurse practitioner and other authorities as required by law and rule.
  - a. When administration has occurred pursuant to an order, the pharmacist shall notify the ordering physician or nurse practitioner within forty-eight hours of the identity of the patient, identity of the medication or vaccine administered, route of administration site of the administration, dose administered, and date of administration and the disposition of any adverse events or reactions experienced by the patient.
  - b. When administration has occurred pursuant to a written protocol, the pharmacist shall notify the participating physician or nurse practitioner within fourteen days of the identity of the patient, identity of the medication or vaccine administered, site of the administration,

dose administered, and date of administration and the disposition of any adverse events or reactions experienced by the patient.

c. In the case of immunizations and vaccinations, the pharmacist shall also provide notification to the physician or nurse practitioner of the manufacturer and lot number of the product administered.

2. Every record, including notification, which is required to be made under this section, must be kept by the administering pharmacist and by the pharmacy when in legal possession of the drugs administered for at least two years from the date of administration. Records of administration must contain all information required in subsection 1, plus the name of the ordering physician or nurse practitioner. Records of administration by order must be by patient name and, in the case of administration by written protocol, records may be maintained in roster form.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 43-15-10

**Law Implemented:** NDCC 43-15-10, 43-15-31.5

**61-04-11-07. Location of administration by injection.** Pharmacists may administer medications by injection within a licensed North Dakota pharmacy or at a location within North Dakota specifically identified in a written protocol. The location in the pharmacy must:

1. Ensure privacy;

2. Be maintained to promote an aseptic environment;

3. Have adequate telecommunications devices to summon aid and communicate emergency situations; and

4. Have adequate equipment and supplies to respond to adverse events and emergency situations.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 43-15-10

**Law Implemented:** NDCC 43-15-10, 43-15-31.5

**61-04-11-08. Policy and procedural manual.** The pharmacy shall maintain a current policy and procedural manual related to the administration of medications by injection.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 43-15-10

**Law Implemented:** NDCC 43-15-10, 43-15-31.5





**TITLE 67**  
**DEPARTMENT OF PUBLIC INSTRUCTION**



JUNE 2002

CHAPTER 67-11-01

**67-11-01-01. Credentials required.** ~~The driver education instructor of an accredited North Dakota school must hold the North Dakota driver education instructor's professional credential. For purposes of school accreditation, a school that provides driver education must employ a teacher who holds a driver education instructor's professional credential as outlined in this chapter or who has an approved major, minor, minor equivalency, or endorsement in driver education issued by the educational standards and practices board.~~

**History:** Effective February 1, 2000; amended effective June 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05

**67-11-01-03. Type Duration of credential - Revocation.** The North Dakota driver education instructor's professional credential is: valid during the period the instructor is a certified teacher and must be renewed each time the instructor's educator's professional license is renewed. An instructor holding a lifetime educator's professional license must renew the driver education instructor's professional credential every five years. If a credential issued under this chapter will expire within twelve months of issuance because the educator's professional license will expire within twelve months of the issuance of the credential, the credential will be issued for a period coinciding with the period of licensure of the succeeding educator's professional license. The driver education instructor's professional credential is invalid if the instructor's driving license is revoked or suspended for any period of time during the credentialed period.

- ~~1. Issued and valid for as long as the instructor is a certified teacher; and~~

2. ~~Issued upon evidence provided of fully satisfying credential standards identified in section 67-11-01-04.~~

**History:** Effective February 1, 2000; amended effective June 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05

**67-11-01-04. Credential standards.** The applicant must fulfill all of the following standards to obtain a credential be credentialed under this chapter:

1. Must at all times during the credential period hold a valid regular North Dakota teaching certificate educator's professional license issued by the education standards and practices board in accordance with North Dakota Century Code sections 15-36-01 and 15-38-18 and North Dakota Administrative Code title 67.1.
  2. Must at all times during the credential period hold a valid nonsuspended and unrevoked operator's license suitable for the type of vehicle to be used.
  3. Within five days of receiving oral or written notice of any pending driver's license suspension or revocation, must provide the department with written notice of any pending or actual suspension or revocation.
  4. Must maintain an insurance policy at least in the amount and type required by North Dakota law, provide a copy of that policy to the department, and provide the department notice if the insurance company intends to cancel the policy.
  5. Must provide the department a waiver permitting the department to obtain a copy of the driving record maintained by the state of licensure as well as submitting a copy of a driving record with the application and annually thereafter.
  6. Must have fewer a satisfactory driving record free from any conviction during the prior thirty-six months that would constitute the basis for suspension or revocation of the instructor's driving license, and may not have more than three moving traffic violations, no alcohol-related traffic violations within the previous twelve months, and a driving record free from repeated traffic law violations, as recorded in the office of the drivers license and traffic safety division of the North Dakota state department of transportation within the past thirty-six months.
- 4: 7. All teachers of driver education in North Dakota must have at least a college-granted minor in driver education or an equivalent to a minor have taken coursework that includes at least sixteen semester or

~~twenty-four quarter hours in courses within the content areas listed below a minimum:~~

- ~~a. Basic driver education: Six semester or eight quarter hours consisting of at least one course each in:
  - ~~(1) Classroom driver and traffic education; and~~
  - ~~(2) In-car instruction.~~~~
- ~~b. Advanced driver education:~~
- ~~c. First aid, a maximum of one semester hour will be applied:~~
- ~~d. Psychology courses, a maximum of six semester hours will be applied:~~
- ~~e. Methods and materials of teaching safety, a maximum of one semester hour audiovisual education will be applied:~~
- ~~f. Motorcycle safety education:~~
- ~~g. Traffic law:~~
- ~~h. Safety education:~~
- ~~i. Driver simulators and multicar driving range:~~
- ~~j. Stimulants and depressants as related to highway safety:~~
- ~~k. Principles of accident prevention:~~
- ~~l. Driver education for the handicapped:~~
- ~~m. Organization, administration, and supervision of safety education:~~
- ~~n. Current developments in driver and traffic safety education:~~
- ~~o. Automotive systems:~~
- ~~p. Defensive driving:~~
- ~~q. Field experience in safety education:~~
- ~~r. Driver education conference: Ten semester or sixteen quarter hours, including:~~

- (1) No more than three semester hours or four quarter hours of health, including a maximum of one semester hour or two quarter hours of first aid and two semester hours or three quarter hours of drug education, will be counted;
- (2) No more than three semester hours or four quarter hours of safety education which may include motorcycle education, traffic law, multicar driving ranges, accident prevention, driver training for the handicapped, defensive driving, and field experiences in safety education will be counted;
- (3) No more than two semester hours or three quarter hours of equipment training, which may include driving simulator use and audiovisual education, will be counted;
- (4) No more than three semester hours or four quarter hours of classroom management will be counted;
- (5) No more than three semester hours or four quarter hours of psychology, of which adolescent psychology is preferred, will be counted;
- (6) No more than two semester hours or three quarter hours of auto mechanics will be counted; and
- (7) No more than two semester hours or three quarter hours of credits received at state or national conferences held by a recognized state or national driver education association will be counted.

**History:** Effective February 1, 2000; amended effective June 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05

**67-11-01-05. Application process.** ~~The application process to~~ To obtain a credential under this chapter ~~is that,~~ the applicant shall:

1. Complete an application SFN 9055 form provided by the department of public instruction, including name, social security number, date, address, verification of ~~teaching certificate~~ educator's professional license, driver's license number, police record information related to traffic violations, and driver education-related coursework.

2. Provide a photocopy copy of an official college transcript that will be used to verify driver education coursework listed on the application.

**History:** Effective February 1, 2000; amended effective June 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05

**67-11-01-06. Reconsideration.** If issuance or renewal of any credential under this chapter is denied, the denial must be in writing and must state all reasons for denial and the applicant must be notified of the opportunity for reconsideration. If an applicant for issuance or renewal of any credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be submitted to in writing and must be received by the superintendent of public instruction within three weeks of the date of mailing by the department of public instruction. Late requests will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

**History:** Effective February 1, 2000; amended effective June 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05

**67-11-01-07. Renewal requirements.**

1. A driver education instructor credential may be renewed by submitting the following:
  - a. A renewal application form, SFN 9055, provided by the department of public instruction; and
  - b. A copy of official transcripts, issued after the date the credential being renewed was issued, documenting completion of two semester hours of undergraduate or graduate credit from the areas listed in section 67-11-01-04.

2. Each credential is valid for the term of the holder's North Dakota educator's professional license.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02, 39-06-05

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11, 39-06-05



**ARTICLE 67-15**

**MODIFIED PUBLIC SCHOOL CALENDAR**

Chapter  
67-15-01  
67-15-02

Modified Public School Calendar [Repealed]  
Reconfiguration of Instructional Days

**CHAPTER 67-15-01**

**MODIFIED PUBLIC SCHOOL CALENDAR**

[Repealed effective June 1, 2002]

**CHAPTER 67-15-02**  
**RECONFIGURATION OF INSTRUCTIONAL DAYS**

Section

<u>67-15-02-01</u>	<u>Definitions</u>
<u>67-15-02-02</u>	<u>Eligibility for Reconfigured School Calendar</u>
<u>67-15-02-03</u>	<u>Application</u>
<u>67-15-02-04</u>	<u>Application Process</u>
<u>67-15-02-05</u>	<u>Evaluation of Applications</u>
<u>67-15-02-06</u>	<u>Modifications to Applications</u>
<u>67-15-02-07</u>	<u>Term of Reconfiguration - Application for Extension</u>
<u>67-15-02-08</u>	<u>Reconsideration</u>
<u>67-15-02-09</u>	<u>Monitoring</u>

**67-15-02-01. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Applicant" means a school seeking approval for reconfiguration of instructional days.
2. "Curricular instruction", as used in subsection 2 of North Dakota Century Code section 15.1-06-04, means the actual class period, including study hall, but does not include time to pass between classes, lunch periods, or other time that is not devoted directly to student instruction.
3. "Department" means the North Dakota department of public instruction.
4. "School" means a public school located in North Dakota and subject to the regulatory authority of the state of North Dakota.
5. "Superintendent" means the North Dakota superintendent of public instruction.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05

**67-15-02-02. Eligibility for reconfigured school calendar.** Upon approval by the superintendent, any school may reconfigure the number of school days required by North Dakota Century Code section 15.1-06-04 if the reconfiguration complies with this chapter and North Dakota Century Code sections 15.1-21-03, 15.1-21-04, and 15.1-06-03.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04

**67-15-02-03. Application.** Application for a reconfigured calendar must be made on SFN 58170. The application must include the school name, signatures of the administrator and board chairman, and the information that is responsive to the considerations to be made by the superintendent, including how the proposed reconfigured calendar relates to the criteria listed in section 67-15-02-05. At a minimum, each applicant shall include the following in the application:

1. The goals and objectives of the reconfiguration program;
2. Documentation of community input into the proposed program, including written correspondence on the subject, summaries of oral contacts, and a summary of any discussions at public meetings or hearings;
3. A cost-benefit study, including potential for savings in transportation and energy costs;
4. The number of hours of instructional time for the most recent school year completed prior to the application;
5. A proposed school calendar that will assure high school students will receive one thousand thirty-eight hours of instructional time and elementary students will receive nine hundred fifty-one and one-half hours of instructional time;
6. A class schedule for each grade level;
7. A contingency plan for makeup days and allowances for storms and other school closings;
8. A professional development plan; and
9. An evaluation plan, including specific plans to evaluate:
  - a. Student performance;
  - b. Student use of facilities;
  - c. Community use of facilities;
  - d. The success rate of any innovations;
  - e. The change in educational opportunities for students;
  - f. The change in academic opportunities for students; and

- g. Any costs savings attributable to the reconfiguration, including savings in staffing, energy, transportation, and maintenance costs.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04

**67-15-02-04. Application process.**

1. A completed SFN 58170 department must be submitted to the department at:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

2. To be considered by the superintendent, an application under this chapter must be received in the department on or before March first of the year prior to the year for which a reconfigured school calendar is sought.
3. The superintendent will review each application and approve, approve with modifications as provided under section 67-15-02-06, or deny the application.
4. Notice of the superintendent's decision will be mailed by first-class mail to the applicant on or before April fifteenth of the year prior to the year for which a reconfigured school calendar is sought.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04

**67-15-02-05. Evaluation of applications.** Each application for a reconfigured school calendar must be evaluated by the superintendent using the following criteria:

1. The impact of the reconfiguration plan on the period of instructional time. Under this criterion the superintendent will consider:
- a. Whether the period of instructional time for elementary students under the proposed plan is equal to or greater than the period of instructional time for elementary students during the previous school year:
- b. Whether the period of instructional time for high school students under the proposed plan is equal to or greater than the period of

instructional time for high school students during the previous school year;

c. Whether the elementary students will receive at least nine hundred fifty-one and one-half hours each year under the plan; and

d. Whether the high school students will receive at least one thousand thirty-eight hours of instructional time.

2. The superintendent must also find one of the following to be a likely result of the reconfiguration:

a. That the proposed plan encourages innovation. Under this criterion the superintendent will consider:

(1) Educational trends relevant to the proposed reconfiguration;

(2) Research relevant to the proposed reconfiguration; and

(3) The likelihood that instructional staff will develop and use innovative means of instruction.

b. That the proposed plan will improve educational opportunities for students. Under this criterion the superintendent will consider:

(1) Educational opportunities available to students under the existing configuration; and

(2) Educational opportunities available to students if the reconfiguration plan is adopted.

c. That the proposed plan will enhance the academic opportunities of the students attending the school. Under this criterion the superintendent will consider:

(1) Academic opportunities available to students under the existing configuration; and

(2) Academic opportunities available to students if the reconfiguration plan is adopted.

d. That the proposed plan will allow current students greater flexibility in the use of the school facilities. Under this criterion the superintendent will consider:

(1) Existing facility use by current students;

- (2) The flexibility in use of school facilities available to current students under the existing configuration; and
  - (3) The flexibility in use of school facilities available to current students if the reconfiguration plan is adopted.
- e. That individuals or groups other than current students will have greater flexibility in the use of the school facilities. Under this criterion the superintendent will consider:
- (1) Existing facility use by individuals and groups other than current students;
  - (2) The flexibility in use of school facilities available to individuals or groups other than current students under the existing configuration; and
  - (3) The flexibility in use of school facilities available to individuals or groups other than current students if the reconfiguration plan is adopted.
- f. That the reconfiguration plan will result in significant cost-savings to the district applying. Under this criterion the superintendent will consider:
- (1) Present costs of the district;
  - (2) Proposed reductions in the district's costs; and
  - (3) The difference between the present costs to the district and the proposed costs under the reconfigured plan will be considered significant if the present costs are anticipated to exceed the proposed costs by forty dollars per student.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04

**67-15-02-06. Modifications to applications.** At any time prior to March first of the year prior to the school year the proposed reconfiguration plan is to take effect, an applicant may submit additional information to the superintendent for consideration as part of the application.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04

**67-15-02-07. Term of reconfiguration - Application for extension.** If approved, a school's reconfiguration plan is valid for one year. A school may request the superintendent to extend the reconfiguration plan for one additional year. A request for extension will be granted only if:

1. The application for extension is received by the superintendent prior to July first of the year after the year in which the reconfiguration was implemented;
2. The school followed the reconfiguration plan as approved by the superintendent; and
3. The school can demonstrate:
  - a. The requisite number of instructional hours for elementary and high school students has been delivered;
  - b. The instructional hours during the reconfigured school year were at least equal to the instructional hours in the prior year; and
  - c. During the reconfigured year either:
    - (1) Innovation occurred in the school;
    - (2) Enhanced educational or academic opportunities were provided to the students;
    - (3) There was greater flexibility in the use of the school by students, nonstudents, or organizations; or
    - (4) The school had substantial financial savings as a result of the reconfiguration.

A reconfiguration may also be granted if a school demonstrates that the program has not resulted in a negative outcome in any of the four evaluation criteria set out in subsection 3 and more time is needed to assure a sufficient evaluation period.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04

**67-15-02-08. Reconsideration.** If the applicant's request for reconfiguration of the school calendar program is denied, the denial must be in writing. The denial must state the reason for the denial. The notice of denial must be mailed to the applicant at the address provided for in the application and must include a notice of the opportunity to request a reconsideration. A request for reconsideration must be in writing and must be received by the superintendent within three weeks of the

date of mailing by the department. Late requests for reconsideration will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete reconsideration request.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04

**67-15-02-09. Monitoring.** The superintendent will monitor the reconfiguration programs of applicants whose programs are approved. The program of monitoring at a minimum will include periodic reports from the applicant setting forth:

1. The number of hours of instructional time provided to high school and elementary students respectively;
2. The enhanced educational and academic opportunities for students;
3. Any innovations resulting from the reconfiguration of the school calendar;
4. The use of school facilities by students;
5. The use of school facilities by nonstudents and organizations;
6. Any cost-savings attributable to the reconfiguration; and
7. Any modifications to the approved reconfiguration program.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-05, 28-32-02

**Law Implemented:** NDCC 15.1-06-05, 15.1-21-03, 15.1-21-04



## CHAPTER 67-19-01

### **67-19-01-12. Alternative formats and procedures. Repealed effective June 1, 2002.**

1. ~~Innovation is encouraged under controlled circumstances. Schools may seek a design for more effective education for its students and may request permission from the state director to develop alternative formats and procedures that differ from the accreditation standards, criteria, and procedures established for North Dakota schools.~~
2. ~~A request for variation from a standard must be submitted by April fifteenth to the state director.~~
3. ~~The request must be considered by the state accreditation committee and may be approved upon meeting the following conditions:~~
  - a. ~~The submitted written plan must include a description of the alternative format and procedures and the process used in developing the plan;~~
  - b. ~~A written statement must be included of the mission or philosophy, the goals and the objectives of the school, and how the alternative format supports this statement and enhances student learning;~~
  - c. ~~The standards for which a variance is being requested and reasons for requesting the variance must be stated;~~
  - d. ~~An explanation must be included showing the intent of the standards and how they will be met using the alternative format being proposed; and~~
  - e. ~~An evaluation procedure must be built into the format that is being proposed.~~

~~The results of the evaluation must be submitted annually to the appropriate state director.~~

**History:** Effective January 1, 2000.

**General Authority:** NDCC 15-21-04.1, 15-21-04.5, 15-45-02

**Law Implemented:** NDCC 15-21-02, 15-21-04.1

### **67-19-01-43. Driver's education program - Administrative requirements.**

A high school may offer a driver's education program. A driver's education program must:

1. Be approved by the department prior to any instruction;

2. Be provided only by an instructor with a driver education instructor credential issued under chapter 67-11-01;
3. Provide insurance coverage for damages to others by student drivers in the amount required by North Dakota Century Code section 39-16.1-02;
4. Have and enforce policies that assure that each student taking a driver's education course has reached the student's fourteenth birthday;
5. Have and enforce policies that assure that the school's insurance carrier provides notice of the necessary insurance coverage to the department of public instruction and that the insurance carrier provides the department ten days' notice of cancellation of the required insurance policy and the reason for the cancellation;
6. Have and enforce policies that assure that at all times during the instructor's certification period, the instructor has a valid, nonsuspended, and unrevoked driver's license for the class of vehicle for which the instructor will provide instruction; and
7. Have and enforce policies that assure that each instructor carries insurance coverage at least in the amounts required by North Dakota law.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-02-11, 15.1-22-02

**Law Implemented:** NDCC 15.1-02-11, 15.1-22-02, 39-06-05, 39-16.1-02

**CHAPTER 67-19-02**  
**WAIVER OF ACCREDITATION STANDARDS OR HIGH SCHOOL**  
**UNIT INSTRUCTIONAL TIME**

Section

<u>67-19-02-01</u>	<u>Definitions</u>
<u>67-19-02-02</u>	<u>Eligibility for Waiver</u>
<u>67-19-02-03</u>	<u>Application</u>
<u>67-19-02-04</u>	<u>Application Process</u>
<u>67-19-02-05</u>	<u>Evaluation of Applications</u>
<u>67-19-02-06</u>	<u>Modifications to Applications</u>
<u>67-19-02-07</u>	<u>Term of Waiver - Application for Extension</u>
<u>67-19-02-08</u>	<u>Reconsideration</u>
<u>67-19-02-09</u>	<u>Monitoring</u>

**67-19-02-01. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Applicant" means a school seeking approval for waiver of an accreditation standard or under North Dakota Century Code section 15.1-06-08.1.
2. "Curricular instruction", as used in subsection 2 of North Dakota Century Code section 15.1-06-04 means the actual class period, including study hall, but does not include time to pass between classes, lunch periods, or other time that is not devoted directly to student instruction.
3. "Department" means the department of public instruction.
4. "School" means a public school located in North Dakota and subject to the regulatory authority of the state of North Dakota.
5. "Superintendent" means the superintendent of public instruction.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-08, 15.1-06-08.1, 28-32-02

**Law Implemented:** NDCC 15.1-06-08, 15.1-06-08.1

**67-19-02-02. Eligibility for waiver.** Any school that has achieved a status of accredited, or accredited with commendation, may seek a waiver of accreditation standards required by this chapter or a waiver of high school unit instructional time required by North Dakota Century Code section 15.1-21-03.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-08, 15.1-06-08.1, 28-32-02

**Law Implemented:** NDCC 15.1-06-08, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

**67-19-02-03. Application.** Application for a waiver of an accreditation standard or of high school unit instructional time must be made on SFN 58169. The application must include the school name, signatures of the administrator and board chairman, and information that is responsive to the considerations to be made by the superintendent, including how the proposed change relates to the criteria listed in section 67-19-02-05. At a minimum, each applicant shall include the following in the application:

1. A detailed account of the waiver requested and the reasons for the waiver, including:
  - a. If the application is for a waiver of an accreditation standard, the standard for which a waiver is being requested, reasons for requesting the waiver of that standard, and an explanation of how the intent of the standard to be waived will be met if the waiver is granted; or
  - b. If the application is for a waiver of high school unit instructional time, a description of the waiver sought.
2. An applicant shall also provide a written statement of the mission or philosophy, the goals and the objectives of the school, and how the waiver of the standard or high school unit instructional time will support the statement and enhance student learning.
3. An evaluation plan, including specific plans to evaluate:
  - a. Student performance;
  - b. Any innovations and their success rate;
  - c. The change in educational opportunities for students; and
  - d. The change in academic opportunities for students.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-08, 15.1-06-08.1, 28-32-02

**Law Implemented:** NDCC 15.1-06-08, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

**67-19-02-04. Application process.**

1. A completed SFN 58169 must be submitted to the department at:

Superintendent of Public Instruction  
Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505-0440

2. To be considered by the superintendent, an application for a waiver under this chapter must be received in the department on or before March first of the year prior to the year for which a waiver is sought.
3. The director will review each application and make a recommendation to the superintendent to approve the application, approve the application with modifications as provided under section 67-19-02-06, or deny the application.
4. The superintendent's decision will be mailed by first-class mail to the applicant on or before April fifteenth of the year prior to the year for which a reconfigured school calendar is sought.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-08, 15.1-06-08.1, 28-32-02

**Law Implemented:** NDCC 15.1-06-08, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

**67-19-02-05. Evaluation of applications.** Each application for a waiver will be evaluated using the following criteria:

1. Whether the application seeks a waiver of an accreditation standard required by state statute other than North Dakota Century Code section 15.1-06-08.1. If so, the waiver cannot be granted.
2. Whether a likely result of the waiver will be to:
  - a. Encourage innovation. Under this criterion, the superintendent will consider:
    - (1) Educational trends relevant to the proposed waiver;
    - (2) Research relevant to the proposed waiver; and
    - (3) The likelihood that instructional staff will develop and use innovative means of instruction;
  - b. Improve educational opportunities for students. Under this criterion, the superintendent will consider:
    - (1) Existing educational opportunities available to students; and
    - (2) Educational opportunities available to students if the waiver is granted; or
  - c. Enhance the academic opportunities of the students attending the school. Under this criterion, the superintendent will consider:

- (1) Existing academic opportunities available to students; and
- (2) Academic opportunities available to students if the waiver is granted.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-08, 15.1-06-08.1, 28-32-02

**Law Implemented:** NDCC 15.1-06-08, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

**67-19-02-06. Modifications to applications.** At any time prior to March first of the year prior to the school year the proposed waiver is to take effect, an applicant that has submitted an application for waiver, upon the written request of the director or on its own initiative, may submit additional information to the superintendent for consideration as part of the waiver application.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-08, 15.1-06-08.1, 28-32-02

**Law Implemented:** NDCC 15.1-06-08, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

**67-19-02-07. Term of waiver - Application for extension.**

1. If approved, a school's request for a waiver of an accreditation standard or a waiver of high school unit instructional time is valid only for the time period requested but not exceeding one year.
2. A school may request the superintendent to extend the waiver of an accreditation standard for up to one additional year. A school may request the superintendent to extend the initial waiver of high school unit instructional time for one year and may request further extensions of a waiver of high school unit instructional time not exceeding two years in length.
3. A request for extension will be granted if:
  - a. The application for extension is received by the superintendent prior to July first of the year in which the waiver terminates; and
  - b. The school can demonstrate that during the period the waiver was in effect either:
    - (1) Innovation occurred in the school;
    - (2) Enhanced educational opportunities were provided to the students; or

- (3) Enhanced academic opportunities were provided to the students.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-08, 15.1-06-08.1, 28-32-02

**Law Implemented:** NDCC 15.1-06-08, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

**67-19-02-08. Reconsideration.** If an applicant's request for a waiver is denied, the denial will be in writing and will state the reason for the denial. The notice of denial will be mailed to the applicant at the address provided for in the application and will include a notice of the opportunity to request a reconsideration. A request for reconsideration must be in writing and must be received by the superintendent within three weeks of the date the department mailed the notice of denial. Late requests, or supplementation of a request for reconsideration after that time, will not be considered. The reconsideration request must state the following:

1. The facts, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the facts, law, or rule should have been applied, giving specific reasons and thorough analysis.

The superintendent of public instruction will issue a final written response to the reconsideration request within three weeks after receiving a complete reconsideration request.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-08, 15.1-06-08.1, 28-32-02

**Law Implemented:** NDCC 15.1-06-08, 15.1-06-08.1, 15.1-21-03, 15.1-21-04

**67-19-02-09. Monitoring.** The superintendent will monitor the programs of applicants whose waiver requests are approved. At a minimum, the monitoring will include periodic reports from the applicant setting forth:

1. The number of hours of instructional time provided to high school and elementary students respectively;
2. The status of the enhanced educational and academic opportunities for students;
3. The status of any innovations resulting from the reconfiguration of the school calendar; and

4. Any cost-savings attributable to the reconfiguration.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 15.1-06-08, 15.1-06-08.1, 28-32-02

**Law Implemented:** NDCC 15.1-06-08, 15.1-06-08.1, 15.1-21-03, 15.1-21-04



**JULY 2002**

**CHAPTER 67-11-03  
READING CREDENTIALS**

[Repealed effective July 1, 2002]

**CHAPTER 67-11-03.1**  
**READING AND MATHEMATICS CREDENTIALS**

Section

<u>67-11-03.1-01</u>	<u>Credential Required</u>
<u>67-11-03.1-02</u>	<u>Requirements for Reading Credentials</u>
<u>67-11-03.1-03</u>	<u>Requirements for Mathematics Credentials</u>
<u>67-11-03.1-04</u>	<u>Secondary Generalist Title I Teacher Credentials</u>
<u>67-11-03.1-05</u>	<u>Initial Credentials</u>
<u>67-11-03.1-06</u>	<u>Application Process</u>
<u>67-11-03.1-07</u>	<u>Renewals - Credentials - Valid License Required - Renewal Requirements - Synchronizing Duration of Educator's Professional License and Credential</u>
<u>67-11-03.1-08</u>	<u>Reconsideration</u>

**67-11-03.1-01. Credential required.** A school must employ a teacher credentialed under this chapter to work directly or indirectly with those students who have failed to benefit from regular classroom instruction. After July 1, 2003, the consolidated application for title I of a school employing noncredentialed staff to teach title I classes will not be approved. Persons holding valid RE01, RE02, RE03, and RE20 credentials on or prior to July 1, 2002, must comply with this chapter upon expiration of their existing credential.

**History:** Effective July 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

**67-11-03.1-02. Requirements for reading credentials.** Reading credentials are issued to a reading teacher who works directly or indirectly with students at the respective grade level, kindergarten through grade twelve, that have failed to benefit from regular classroom instruction in reading. To obtain a reading credential a teacher must:

1. Have completed a planned program from an accredited institution, including instruction in:
  - a. Two semester hours in diagnosis and correction of reading disabilities which may not be from a workshop;
  - b. Two semester hours in clinical or laboratory practicum in reading which may not be from a workshop; and
  - c. Two semester hours in reading in the content areas which may be from a workshop;

2. Complete a minimum of eight semester hours in no fewer than three courses. The coursework must consist of no more than two classes from each of the following areas:
  - a. Early childhood;
  - b. Research and literature in reading or language arts;
  - c. Exceptional child;
  - d. Creative language activities, including poetry for children, storytelling, writing, and dramatics; or
  - e. Curriculum development;
3. Have a major, minor, or endorsement in elementary or middle school education; and
4. Hold a valid North Dakota educator's professional license.

**History:** Effective July 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

**67-11-03.1-03. Requirements for mathematics credentials.** Mathematics credentials are issued to mathematics teachers who work directly or indirectly with students at the respective grade level that have failed to benefit from regular classroom instruction in mathematics.

1. To obtain a mathematics credential to instruct students in kindergarten through grade six in an elementary setting a teacher must:
  - a. Have a major, minor, or endorsement in elementary education;
  - b. Hold a valid North Dakota educator's professional license; and
  - c. Have completed a minimum of six semester hours in mathematics.
2. To obtain a mathematics credential to instruct students in kindergarten through grade twelve a teacher must:
  - a. Have a major, minor, or endorsement in elementary or middle school education;
  - b. Hold a valid North Dakota educator's professional license; and

- c. Have completed a minimum of six semester hours in mathematics, including a course titled college algebra.

**History:** Effective July 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

**67-11-03.1-04. Secondary generalist title I teacher credentials.** To obtain a credential to instruct students in a middle school, junior high, or secondary setting who have failed to benefit from regular classroom instruction in any subject a teacher must either have:

1. Both an elementary title I reading credential issued under section 67-11-03.1-02 and a mathematics credential issued under subsection 2 of section 67-11-03.1-03; or
2. Meet the following requirements:
  - a. Hold a bachelor's degree in middle school or secondary education or an endorsement in middle level or secondary education as prescribed by the education standards and practices board;
  - b. Hold a valid North Dakota educator's professional license;
  - c. Hold a college-granted major or minor in an English language arts area or have sixteen semester or twenty-four quarter hours of acceptable English language arts coursework; and
  - d. Complete a planned program from a state-approved program in elementary, middle level, or secondary education, which must provide a minimum of sixteen semester or twenty-four quarter hours of coursework, including the following:
    - (1) A minimum of two semester or three quarter hours in each of the following content areas:
      - (a) Foundations or survey of reading;
      - (b) Reading in the secondary school;
      - (c) Diagnosis and correction of reading disabilities; and
      - (d) Clinical or laboratory practicum in reading with secondary students;

(2) A total of eight semester or twelve quarter hours in four of the following courses or content areas from a state-approved program in elementary, middle level, or secondary education. No more than two courses in each content area will qualify:

(a) Research and the literature in reading or language arts;

(b) Exceptional child;

(c) Curriculum development;

(d) English education methods;

(e) Reading in the content areas; and

(f) Creative language activities, including poetry for adolescents, storytelling, writing, and dramatics; and

(3) A total of six semester hours of mathematics, including a course titled college algebra.

**History:** Effective July 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

**67-11-03.1-05. Initial credentials.**

1. A teacher who holds a valid educator's professional license and either a bachelor's degree in elementary, middle, or secondary education, or an endorsement in elementary, middle, or secondary education, but does not meet the requirements to obtain a credential under section 67-11-03.1-02, 67-11-03.1-03, or 67-11-03.1-04 may apply for an initial credential under this section.

2. An initial credential is valid until the end of the second full school term following the date the credential is issued to the teacher.

3. To obtain an initial credential a teacher must:

a. Provide the title I office in the North Dakota department of public instruction with a written offer of employment as a title I teacher from a North Dakota school district;

b. Provide the title I office in the North Dakota department of public instruction with a written plan of study which will qualify the teacher for a credential under section 67-11-03.1-02, 67-11-03.1-03, or

67-11-03.1-04 within two calendar years after the date the initial credential is issued. The plan of study must include coursework that, in addition to courses previously taken, will complete the requirements for a credential under either section 67-11-03.1-02, 67-11-03.1-03, or 67-11-03.1-04; and

- c. Provide the title I office in the North Dakota department of public instruction with the items required by section 67-11-03.1-06.

**History:** Effective July 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

**67-11-03.1-06. Application process. An applicant for a credential or initial credential must submit to the title I office:**

1. A completed SFN 18041 form, including the applicant's name, social security number, address, telephone number, date of application, type of credential applied for, employment information, contact information for references, and signature; and
2. A copy of the applicant's official transcripts.

**History:** Effective July 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

**67-11-03.1-07. Renewals - Credentials - Valid license required - Renewal requirements - Synchronizing duration of educator's professional license and credential. A credential issued under this chapter is valid only while the credentialed individual holds a valid North Dakota life teacher's certificate or a North Dakota educator's professional license. An applicant for renewal of a credential issued under this chapter must:**

1. Renew the credential prior to the expiration of the applicant's educator's professional license, or every five years if the applicant has a life teacher certificate;
2. Provide a copy of official transcripts;
3. Submit a completed SFN 18041 form, including the applicant's name, address, social security number, date, telephone number, type of credential being renewed, employment information, and signature; and
4. Complete continuing education requirements as follows:

a. Except when a first-time credential issued under this chapter will expire within twenty-four months of issuance of the new credential because the educator's professional license will expire, must:

(1) If prior to January 1, 2004, complete four semester hours of graduate level credit before the expiration date of the applicant's credential:

(a) The credits must be in mathematics if the credential being renewed is for mathematics;

(b) The credits must be in reading if the credential being renewed is for reading;

(c) The credits must consist of two each in reading and mathematics if the applicant is renewing both a mathematics and a reading credential; and

(d) The credits must consist of education-related courses if the credential being renewed is a secondary generalist title I teacher credential.

(2) If after December 31, 2003, complete four semester hours of graduate level credit before the expiration date of the applicant's credential.

(a) The credits must be in mathematics if the credential being renewed is for mathematics;

(b) The credits must be in reading if the credential being renewed is for reading and at least one reading course must be based upon scientifically based reading research;

(c) The credits must consist of two each in reading and mathematics if the applicant is renewing both a mathematics and reading credential and at least one reading course must be based upon scientifically based reading research; and

(d) The credits must consist of education-related courses if the credential being renewed is a secondary generalist title I teacher credential and at least one reading course must be based upon scientifically based reading research.

b. An applicant who holds a two-year educator's professional license must complete two semester hours of graduate level credit before the expiration date of the applicant's credential:

(1) If prior to January 1, 2004, complete two semester hours of graduate level credit before the expiration date of the applicant's credential:

(a) The credits must be in mathematics if the credential being renewed is for mathematics;

(b) The credits must be in reading if the credential being renewed is for reading;

(c) The credits must consist of one each in reading and mathematics if the applicant is renewing both a mathematics and a reading credential; and

(d) The credits must consist of education-related courses if the credential being renewed is a secondary generalist title I teacher credential.

(2) If after December 31, 2003, complete two semester hours of graduate level credit before the expiration date of the applicant's credential.

(a) The credits must be in mathematics if the credential being renewed is for mathematics;

(b) The credits must be in reading if the credential being renewed is for reading and at least one reading course must be based upon scientifically based reading research;

(c) The credits must consist of one each in reading and mathematics if the applicant is renewing both a mathematics and reading credential and the reading course must be based upon scientifically based reading research; and

(d) The credits must consist of education-related courses if the credential being renewed is a secondary generalist title I teacher credential and at least one reading course



must be based upon scientifically based reading research.

**History:** Effective July 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

**67-11-03.1-08. Reconsideration.** If an application for a credential, or renewal of a credential, under this chapter is denied, the denial must be in writing and must state all reasons for the denial. The applicant must be notified of the opportunity for reconsideration if an application for a credential or renewal of a credential is denied. If the application for a credential or renewal of a credential under this chapter is denied, the applicant may request a reconsideration of the decision. A request for reconsideration must be in writing and must be received by the superintendent of public instruction within three weeks of the date of mailing of the notice of denial by the department of public instruction. Untimely requests will not be considered. The request for reconsideration must state the following:

1. The fact, law, or rule the applicant believes was erroneously interpreted or applied; and
2. The applicant's arguments on how the fact, law, or rule should have been applied, giving specific reasons and a thorough analysis.

The superintendent of public instruction shall issue a final written response on the reconsideration request within three weeks after receiving a complete and timely reconsideration request.

**History:** Effective July 1, 2002.

**General Authority:** NDCC 15.1-02-04, 15.1-02-11, 28-32-02; Pub. L. 107-110, §1119

**Law Implemented:** NDCC 15.1-02-04, 15.1-02-11; Pub. L. 107-110, §1119

## CHAPTER 67-11-11

### 67-11-11-04. Types of credentials.

1. The professional credential is:
  4. ~~Issued~~ issued and is valid for the same period as the teaching educator's professional license; and,
2. ~~Issued on the standards identified in section 67-11-11-03:~~ The provisional letter of approval is:
  - a. Issued and is valid for one school year, including the following summer.
  - b. Based on documentation of general education teaching experiences, a current teaching license, and a program of study based on the standards identified in section 67-11-11-03 at a college or university with an accredited training program.
  - c. Based on the school district's description of the need for a provisionally credentialed staff member.

**History:** Effective February 1, 2000; amended effective July 1, 2002.

**General Authority:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

**Law Implemented:** NDCC 15.1-02-11, 15.1-32-02, 15.1-32-09

## CHAPTER 67-19-01

**67-19-01-29. Instructional personnel - Elementary school teacher qualifications - Specific subject preparation.** Elementary school teachers who provide instruction in specific subject areas must comply with the following:

1. **Classroom teachers providing keyboarding instruction.** If keyboarding is taught as a separate subject, academic preparation must include completion of a course or workshop in keyboarding. All teachers are recommended to integrate computer technology into all courses as appropriate within the goals and objectives, for example, but not to limit the application: language arts - word processing; social studies - simulations.
2. **Teachers in a departmentalized program.** A teacher assigned to a departmentalized program for any grades five through eight must have the specific preparation to teach the courses as indicated in section 67-19-01-27.
3. **Special education personnel.** A special education teacher must have a special education credential in the area of service provided by the teacher.
4. **Reading specialists.** A remedial or ~~basic skills~~ title I teacher must have a reading credential ~~or must have completed twenty semester or thirty quarter hours of required coursework within two years of the assumption of duties.~~
5. **Special teachers of mathematics.** A special teacher of mathematics must have a major, minor, or an endorsement in elementary education ~~with academic preparation that must include at least six semester or eight quarter hours of mathematics appropriate to the elementary level~~ either a mathematics credential or have been authorized to teach mathematics before July 1, 2002.
6. **Special teachers of music, computer education, and foreign language.** A teacher assigned to teach in kindergarten through grade eight in music, computer education, and foreign language must have the specific preparation to teach the courses as indicated in section 67-19-01-24.
7. **Teachers of North Dakota studies.** Academic preparation must include completion of a course or workshop in North Dakota studies.

8. **Teachers of health.** Academic preparation must include completion of a course or workshop in health.

**History:** Effective January 1, 2000; amended effective July 1, 2002.

**General Authority:** NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11, 15.1-22-02

**Law Implemented:** NDCC ~~15-21-04.1, 15-45-02~~ 15.1-02-11, 15.1-22-02

**TITLE 72**  
**SECRETARY OF STATE**



JUNE 2002

CHAPTER 72-01-02

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. ~~2.~~ "Associated filings" includes all amendments, assignments, continuations, subordination notices, releases, updates, and terminations which have been filed relating to a specific Uniform Commercial Code "Amendment" means a UCC document that amends the information contained in a financing statement or central notice system financing statement or a specific statutory lien. Amendments include assignments, continuations, and terminations.
3. "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.
4. "Central notice system" means farm product central notice system adopted pursuant to North Dakota Century Code section ~~41-09-46~~ 54-09-09.
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 the secured party's interest in all of the collateral. "Correction statement" means a UCC record filed by the debtor to indicate that a financing statement is inaccurate or wrongfully filed.

6. ~~"Debtor's address" means post-office mailing address. "Federal liens" means those federal liens described in North Dakota Century Code section 35-29-01.~~
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. "Filing office" means any one of the fifty-three county recorder's offices or the secretary of state's office.~~
8. ~~"Federal liens" means those federal liens described in North Dakota Century Code section 35-29-01. "Filing officer" means any one of the fifty-three county recorders or the secretary of state.~~
9. ~~"Filing office" means any one of the fifty-three county register of deeds' offices or the secretary of state's office. "Filing officer statement" means a statement entered into the filing office's information system to correct an error by the filing office.~~
10. ~~"Financing statement" means any document submitted for filing as an effective financing statement under North Dakota Century Code section 41-09-41. "Individual" means a human being, or a decedent in the case of a debtor that is the decedent's estate.~~
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. "Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that caused the filing office to establish the initial record of existence of a financing statement.~~
12. "Lienholder" means any person or entity which has a statutory lien.
13. "Nonstandard form" means any document or paper record presented for filing which is not specified as a standard form, whether presented as a separate filing record or as an attachment to a standard form.
14. ~~"Secured party's address" means post-office mailing address. "Organization" means a legal person who is not an individual.~~
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. "Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service~~



or a courier service, but does include a service provider who acts as a filer's representative in the filing process.

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), the ASL-4 (assignment, amendment, or lien release), ASL-5 (landlord lien notice), MSL-1 (miscellaneous statutory lien), and MSL-2 (assignment, amendment, or lien release)~~ approved by the North Dakota secretary of state. ~~An eight and one-half inches by eleven inches page or pages solely listing additional information 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" "UCC"~~ 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. "UCC record" means an initial financing statement, an amendment, an assignment, a continuation, a termination, or a correction statement and shall not be deemed to refer exclusively to paper or paper-based writings.~~

**History:** Effective February 1, 1992; amended effective November 1, 1999; June 1, 2002.

**General Authority:** NDCC 28-32-02, 41-09-97, 54-09-09

**Law Implemented:** NDCC 28-32-02, 41-09-46 41-09-72, 41-09-73, 41-09-74, 41-09-75, 41-09-76, 41-09-77, 41-09-78, 41-09-79, 41-09-80, 41-09-81, 41-09-82, 41-09-83, 41-09-84, 41-09-85, 41-09-86, 41-09-87, 41-09-88, 41-09-89, 41-09-90, 41-09-91, 41-09-92, 41-09-93, 41-09-94, 41-09-95, 41-09-96

**72-01-02-03. Lapsed filings.** Repealed effective June 1, 2002.

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 amendment,~~ statutory lien, state tax lien, and federal lien accepted for filing will be given a computer-generated filing file 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 record filed beginning January 1, 1992, will be based on prevailing central time.

A UCC record delivered after regular business hours or on a day the filing office is not open for business will be filed in the ordinary course of business on the next working day the filing office is open.

**History:** ~~Effective February 1, 1992; amended effective November 1, 1999; June 1, 2002.~~

**General Authority:** ~~NDCC 28-32-02, 41-09-46 41-09-97, 54-09-09~~

**Law Implemented:** ~~NDCC 41-09-42, 41-09-43, 41-09-44, 41-09-45, 41-09-46 41-09-90~~

**72-01-02-05. Associated filings or lien releases.** Repealed effective June 1, 2002.

- 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 lists the same individual as both debtor and secured party or if it does not have all of for the following:
  - a. Each Failure to provide 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; Failure to provide the name of the debtor;
  - 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; Failure to indicate whether the debtor is an individual or an organization;
  - 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; If identified as an individual, failure to provide the last name of the debtor;
  - e. An address for the secured party from which further information may be obtained; and If identified as an organization, failure to provide organizational information for the debtor; including the type of organization, jurisdiction of organization, and an organizational identification number or an indication that the debtor has none;
  - f. Some collateral listed. Failure to provide a mailing address for the debtor;
  - g. Failure to provide a name for the secured party;
  - h. Failure to provide a mailing address for the secured party;
  - i. Failure to provide a name for the assignee; or
  - j. Failure to provide a mailing address for the assignee.
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. An amendment or correction statement will be rejected for the following:
- a. Failure to file each amendment, continuation, termination, or lien release in the same filing office as the original financing statement or lien to which it relates;
  - b. Failure to identify a file number of an initial financing statement to which it refers; or

c. If it identifies an initial financing statement for which effectiveness has lapsed.

3. ~~A 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 must be filed within the six-month window prior to lapse.~~
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 social security number or tax identification number and the signature of the affected debtor and the signature of the current secured party. Any other associated filing will be rejected if it does not contain the current secured party's signature.~~
5. ~~A continuation statement submitted for filing with any filing officer must be rejected if it does not contain a social security number or tax identification number for each debtor unless that number was included on the original financing statement, submitted with the refiling, or included on a prior associated filing.~~
6. Any 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.
7. 5. 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.
8. 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; amended effective March 1, 1994; November 1, 1999; June 1, 2002.

**General Authority:** NDCC 28-32-02, 41-09-97, 54-09-09

**Law Implemented:** NDCC 41-09-41, 41-09-42, 41-09-44, 41-09-46 41-09-87

#### **72-01-02-07. Central notice system.**

1. If no quantity of crops or livestock is designated in on 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 on 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 on 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. An initial filing and an amendment of a central notice system filing must be signed by all the debtors and the secured party. A continuation statement, partial release, and termination statement of a central notice system filing must be signed by the secured party.

**History:** Effective February 1, 1992; amended effective May 1, 1999; June 1, 2002.

**General Authority:** NDCC 28-32-02, 41-09-97, 54-09-09

**Law Implemented:** NDCC 41-09-28, 41-09-41 41-09-40, 54-09-09, 54-09-10;  
7 U.S.C. § 1631; 9 CFR part 205

**72-01-02-09. Updates.** Repealed effective June 1, 2002. ~~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. Repealed effective June 1, 2002.**

- ~~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. The filing officer maintains for public inspection a searchable index for all records of UCC documents. The index shall provide for retrieval of a record by the name of the debtor, social security or tax identification number, and by the file number of the initial financing statement and each filed UCC record relating to the initial financing statement.
  - a. Name searched. A search request should set forth the name of the debtor to be searched and must specify whether the debtor is an individual or an organization. A request will be processed using the name in the exact form it is submitted.
  - b. Requesting party. A search request must include the name and address of the person to whom the search report is to be sent.
  - c. Search request with filing. If a filer requests a search at the time a UCC record is filed, the name searched will be the debtor name as set forth on the form. The requesting party shall be the remitter of the UCC record and the search request shall be deemed to request a search that would retrieve all financing statements filed on or prior to the date the UCC record is filed.
2. Rules applied to search requests. Search results are produced by the application of standardized search logic to the name presented to the filing officer. Human judgment does not play a role in determining the results of the search. The following apply to searches:
  - a. There is no limit to the number of matches that may be returned in response to the search criteria.
  - b. No distinction is made between uppercase and lowercase letters.
  - c. Punctuation marks and accents are disregarded.
  - d. The word "the" at the beginning of the search criteria is disregarded and "and" and "&" are interchangeable.
3. Optional information.

- a. Public access. Any person may obtain from any filing office at no charge the following information:
  - a. (1) Whether any filings records exist for a specific name, or social security number or tax identification number, within the computerized central index system; and
  - b. (2) If any filings records exist for the specific name, or social security number or tax identification number, the index in which they appear; and
  - c. (3) The filing office in which the documents records are located.
- 2. b. Data bases. Included within the computerized central index systems are the following indexes which may be searched:
  - a. (1) Uniform Commercial Code index, including agricultural statutory liens;
  - b. (2) Central notice system index;
  - c. (3) Statutory lien index;
  - d. (4) Agricultural statutory lien notice index;
  - e. (5) Federal lien index; and
  - f. (6) State tax lien index.
- 3. c. Types of searches.
  - a. (1) 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. (2) Each name, or social security number or tax identification number, searched must be deemed a separate search.
  - c. (3) A search request must indicate which index or indexes are to be searched. If no index is indicated, the search will be on unexpired UCC filings only.
  - d. (4) A copy of a filing must include all pages of the original filing and of each associated filing amendment.
- 4. d. Copy requests.



a. (1) A copy of a filing must include all pages of the original filing and of each ~~associated filing~~ amendment.

b. (2) 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; amended effective November 1, 1999; June 1, 2002.

**General Authority:** NDCC 28-32-02, ~~41-09-46~~ 41-09-97, 54-09-09

**Law Implemented:** NDCC ~~41-09-46~~ 41-09-40, 41-09-90, 41-09-94, 41-09-96, 54-09-09, 54-09-10, 54-09-11

**72-01-02-12. Insolvency proceedings.** Repealed effective June 1, 2002.  
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, statutory lien, separate agricultural statutory lien notice, or federal lien.
2. 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.
- ~~3.~~ 2. The fee for having information faxed to a requesting party is three dollars. A maximum of twenty pages may be faxed.
- ~~4.~~ 3. The fee for filing an update is ten dollars.
4. The fee for filing a correction statement is ten dollars.
- ~~5.~~ The fee for filing a name change in the name change index is one hundred dollars.

6. ~~The fee for having all filings updated with a current secured party's name change is four hundred dollars.~~
7. 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.
- 8: 6. All fees not specified within this section are as set forth in North Dakota Century Code sections 11-18-05, 35-17-08, 35-29-05, 35-30-06, 35-31-06, ~~41-09-28.1, 41-09-42, and 41-09-43~~ 41-09-96, and 54-09-11.
- 9: 7. 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.

**History:** Effective February 1, 1992; amended effective November 1, 1999; June 1, 2002.

**General Authority:** NDCC 28-32-02, ~~41-09-42~~ 41-09-97, 54-09-09

**Law Implemented:** NDCC ~~41-09-28.1, 41-09-42, 41-09-43~~ 41-09-94, 41-09-96, 54-09-11

**TITLE 75**  
**DEPARTMENT OF HUMAN SERVICES**



JUNE 2002

CHAPTER 75-02-10

**75-02-10-01. Definitions.** For purposes of this chapter, unless the context requires otherwise:

1. "Assisted living" means an environment where a person lives in an apartment-like unit and receives services on a twenty-four-hour basis to accommodate that person's needs and abilities to maintain as much independence as possible. "Activities of daily living" means bathing, dressing, toileting, transferring, eating, bed mobility, medication management, and personal hygiene.
2. "Aged" means at least sixty-five years of age.
3. "Basic care facility" means a facility defined in North Dakota Century Code section 23-09.3-01, which is not owned or operated by the state: residence, not licensed under North Dakota Century Code chapter 23-16 by the department, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services and:
  - a. Makes response staff available at all times to meet the twenty-four-hour per day scheduled and unscheduled needs of the individual; or
  - b. Is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility.
4. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

~~3-~~ 5. "Congregate housing" means housing shared by two or more ~~persons~~ individuals not related to each other which is not provided in an institution.

~~4-~~ 6. "Countable income" means gross income reduced by:

- a. The cost of guardianship or conservatorship fees actually charged, but no more than five percent of monthly gross income;
- b. The cost of the medicare premium, but only if the ~~person~~ individual is ineligible for medicare cost-sharing benefits described in subdivision a of subsection 19 of section 75-02-02.1-01 as a qualified medicare beneficiary or a special low-income medicare beneficiary;
- c. Court-ordered child support payments actually paid on behalf of a minor child who is not a member of the ~~person's~~ individual's medicaid unit; and
- d. For ~~persons~~ individuals receiving benefits provided under subsection 1 or 2 of section 75-02-10-02:
  - (1) In the month the ~~person~~ individual enters the facility, the medically needy income level for a family of the size of the family in which the ~~person~~ individual was a member at the beginning of the month; and
  - (2) Sixty-five dollars plus one-half of the remaining monthly gross earned income.

~~5-~~ 7. "County agency" means the county social service board.

~~6-~~ 8. "Department" means the department of human services.

9. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

10. "Eligible beneficiary" means a resident of this state who:

a. (1) Is aged; or

(2) Is at least eighteen years of age and is disabled or blind;

b. Has applied for and is eligible to receive benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], provided that an

individual who was eligible to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and who was receiving benefits under title XVI before January 1, 1995, is not ineligible because that individual is not eligible to receive benefits under title XIX;

c. Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:

(1) Has health, welfare, or safety needs, including a need for supervision or a structured environment, which requires care in a licensed adult family foster care home or a licensed basic care facility; or

(2) Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry; and

d. Is determined to be eligible pursuant to rules adopted by the department.

7. 11. "Gross income" includes any income at the disposal of an applicant, recipient, or responsible relative; any income with respect to which an applicant, recipient, or responsible relative has a legal interest in a liquidated sum and the legal ability to make the sum available for support or maintenance; or any income an applicant, recipient, or responsible relative has the lawful power to make available or to cause to be made available. It includes any income that would be applied in determining eligibility for benefits under chapter 75-02-02.1; any income, except occasional small gifts, that would be disregarded in determining eligibility for benefits under chapter 75-02-02.1; annuities, pensions, retirement, and disability benefits to which an applicant or recipient, or spouse of an applicant or recipient, may be entitled, including ~~veteran's~~ veterans' compensation and pensions of any type, old-age survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.

8. 12. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to four or more persons individuals who are not related to the proprietor.

9. "~~Living independently~~" includes living in congregate housing. The term ~~does not include living in an institution.~~

~~10.~~ 13. "Instrumental activities of daily living" means activities to support independent living, including housekeeping, shopping, laundry, transportation, and meal preparation.

14. "Necessary benefits" means those benefits:

- a. Provided under this chapter;
- b. Identified by the department (, or a county agency under the direction and supervision of the department), as appropriate to meet the needs of an applicant or recipient; and
- c. Which, when provided in coordination and conjunction with benefits available from any other source, represent the means least costly to the department of meeting the needs of the applicant or recipient.

~~11.~~ "Qualified service provider" means a county agency or independent contractor who:

- ~~a. Agrees to meet standards for services and operations established by the department;~~
- ~~b. Has in effect a current provider agreement with the department; and~~
- ~~c. Has not been subject to loss of provider status under chapter 75-02-05 or section 75-03-23-08.~~

~~12.~~ 15. "Proprietor" means an individual responsible for day-to-day administration and management of a facility.

16. "Related by blood or marriage to the owner or manager" means an individual who is a spouse or former spouse of the owner or manager or is a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of the owner or manager or the owner or manager's spouse or former spouse.

17. "Related to the proprietor" means an individual who is a proprietor's spouse or former spouse, or a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of a proprietor or proprietor's spouse or former spouse.

18. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration



of an eligible beneficiary to the beneficiary's best possible functional level.

~~13. "Total income" means countable income.~~

**History:** Effective May 1, 1995; amended effective January 1, 1997; June 1, 2002.

**General Authority:** NDCC ~~50-06-15~~ 50-06-16, 50-24.5-02(8)

**Law Implemented:** NDCC 50-24.5

**75-02-10-02. Benefits available under this chapter.** To the extent that an eligible ~~person~~ individual lacks income sufficient to meet the cost of necessary benefits, the following benefits are available:

1. Supplementation of the income of users of adult family foster care services;
2. Supplementation of the income of users of basic care services;
3. Homemaker services;
4. Chore services;
5. Respite care;
6. Home health aide services;
7. Case management;
8. Family home care;
9. Adaptive assessment; and
10. Other services the department determines to be essential and appropriate to sustain ~~a person~~ an individual in the ~~person's~~ individual's home and community, and to delay or prevent institutional care.

**History:** Effective May 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC ~~50-06-15~~ 50-06-16, 50-24.5-02(8)

**Law Implemented:** NDCC 50-24.5

**75-02-10-03. Application and redetermination.**

1. a. All individuals wishing to make application for benefits under this chapter must have the opportunity to do so, without delay.

- b. An application is a request made by ~~a person~~ an individual desiring benefits under this chapter, or by a proper ~~person~~ individual seeking such benefits on behalf of another ~~person~~ individual, to a county agency. A proper ~~person~~ individual means any ~~person~~ individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.
  - c. An application consists of an application for medicaid benefits and an application for services, which includes a functional assessment.
  - d. Application forms must be signed by the applicant if the applicant is physically and mentally able to do so. An application made on behalf of an applicant adjudged incompetent by a court must be signed by the guardian.
  - e. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who require it.
  - f. The date of application is the date an application, signed by an appropriate ~~person~~ individual, is received at a county agency.
2. A redetermination must be made within thirty days after a county agency has received information indicating a possible change in eligibility status, when a recipient enters a nursing facility, and, in any event, no less than annually. A recipient or recipient's guardian has the same responsibility to furnish information during a redetermination as an applicant or an applicant's guardian has during an application.

**History:** Effective May 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC ~~50-06-15~~ 50-06-16, 50-24.5-02(8)

**Law Implemented:** NDCC 50-24.5

**75-02-10-05. Eligibility criteria.** ~~A person~~ An individual may receive necessary benefits under this chapter if the ~~person~~ individual:

- 1. Is a resident of this state;
- 2. Is:
  - a. Sixty-five years of age or older; or
  - b. Eighteen years of age or older and disabled or blind;
- 3. Has applied for and been found eligible for medicaid benefits;

4. Has countable income which, when reduced by the cost of necessary benefits provided under:
  - a. Subsection 1 or 2 of section 75-02-10-02, does not exceed ~~forty-five~~ sixty dollars; or
  - b. Section 75-02-10-02, except subsection 1 or 2, does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381, et seq.], which the ~~person~~ individual would receive if the ~~person~~ individual had no income or assets;
5. Has not made an assignment or transfer of property for the purpose of rendering ~~himself or herself~~ the individual eligible for assistance under this chapter; and
6. Based on a functional assessment made in accordance with this chapter, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating; and
  - a. Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or a licensed basic care facility; or
  - b. Is impaired in three of the following four instrumental activities of daily living:
    - (1) Preparing meals;
    - (2) Doing housework;
    - (3) Taking medicine; and
    - (4) Doing laundry.

**History:** Effective May 1, 1995; ~~amended effective June 1, 2002.~~

**General Authority:** NDCC ~~50-06-15~~ 50-06-16, 50-24.5-02(8)

**Law Implemented:** NDCC 50-24.5

**75-02-10-06. Functional assessment.**

1. For purposes of this section:
  - a. ~~"Activities of daily living" means those measurable activities that may be used to measure independence, including:~~
    - (1) Bathing;

- (2) Dressing and undressing;
- (3) Eating;
- (4) Toileting;
- (5) Continence;
- (6) Transferring in or out of bed or chair; and
- (7) Ability to get around inside the person's home.

b. "Instrumental activities of daily living" means those measurable activities that may not need to be done daily, but are important for independent living, including:

- (1) Meal preparation;
- (2) Housework;
- (3) Laundry;
- (4) Shopping;
- (5) Taking medicine;
- (6) Ability to get around outside the person's home;
- (7) Transportation;
- (8) Money management; and
- (9) Use of a telephone.

c. "Multidimensional client, "functional assessment" means an instrument used to record basic demographic and medical information about a person an individual, including age, date of birth, spoken language, marital status, persons individuals residing with, emergency contacts, medical resources, health care coverage, and source and reason for referral; and to secure measurable information regarding:

- (1) a. Physical health;
- (2) b. Cognitive and emotional functioning;
- (3) c. Activities of daily living;

- (4) d. Instrumental activities of daily living;
- (5) e. Informal supports;
- (6) f. Need for twenty-four-hour supervision;
- (7) g. Social participation;
- (8) h. Physical environment;
- (9) i. Financial resources; and
- (10) j. Other information about the ~~person's~~ individual's condition not recorded elsewhere.

2. An initial functional assessment, using an appropriate form determined by the department, must be completed as a part of the application for benefits under this chapter. An update of the ~~person's~~ individual's functional assessment must be completed in conjunction with each medicaid eligibility redetermination that is anticipated to be completed at least six months after the initial functional assessment.
3. A functional assessment must include an interview with the ~~person~~ individual in the home where the ~~person~~ individual resides.

**History:** Effective May 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC ~~50-06-15~~ 50-06-16, 50-24.5-02(8)

**Law Implemented:** NDCC 50-24.5

**75-02-10-06.1. Adaptive assessment services.** Adaptive assessment services are available to ~~a person~~ an individual receiving services under section 75-02-10-02, except subsection 1 or 2, only if the ~~person~~ individual:

1. Is eighteen years of age or older;
2. Seeks to enhance independence and functional capabilities resulting in a direct benefit of increased performance of personal cares and routine household tasks; and
3. Agrees to comply with recommendations of an interdisciplinary team regarding the use of adaptive devices, equipment, or modifications to the ~~person's~~ individual's surroundings.

**History:** Effective January 1, 1997; amended effective June 1, 2002.

**General Authority:** NDCC 50-06-16, 50-24.5-02(8)

**Law Implemented:** NDCC 50-24.5

**75-02-10-08. Disqualifying transfers.**

1. a. Except as provided in subsection 2, ~~a person~~ an individual is ineligible for benefits under this chapter if the ~~person~~ individual or the spouse of the ~~person~~ individual disposes of assets or income for less than fair market value on or after the look-back date specified in subdivision b.
  - b. The look-back date specified in this subdivision is a date that is thirty-six months, or, in the case of payments from a trust or portions of a trust that are treated as income or assets disposed of by ~~a person~~ an individual, sixty months, before the date on which the ~~person~~ individual has applied for benefits under this chapter.
2. ~~A person~~ An individual is not ineligible for benefits under this chapter by reason of subsection 1 to the extent that:
  - a. The assets transferred were a home, and title to the home was transferred to:
    - (1) The ~~person's~~ individual's spouse; or
    - (2) The ~~person's~~ individual's son or daughter who is under age twenty-one, blind, or disabled;
  - b. The income or assets:
    - (1) Were transferred to the ~~person's~~ individual's spouse or to another for the sole benefit of the ~~person's~~ individual's spouse; or
    - (2) Were transferred from the ~~person's~~ individual's spouse to another for the sole benefit of the ~~person's~~ individual's spouse;
  - c. The ~~person~~ individual makes a satisfactory showing that:
    - (1) The ~~person~~ individual intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the ~~person~~ individual had an objectively reasonable belief that fair market value or its equivalent was received;
    - (2) The income or assets were transferred exclusively for a purpose other than to qualify for medicaid or benefits under this chapter; or

- (3) For periods after the return, all income or assets transferred for less than fair market value have been returned to the person individual; and
- d. The individual shows that the total cumulative uncompensated value of all income and assets transferred for less than fair market value by the individual or the individual's spouse is less than the actual cost of services of a type provided as benefits under this chapter, provided after the transfer was made, for which payment has not been made and which are not subject to payment by any third party, provided that such a showing may only be made with respect to periods when the person individual is otherwise eligible for benefits under this chapter.
3. There is a presumption that a transfer for less than fair market value was made for purposes, including the purpose of qualifying for benefits under this chapter:
- a. In any case in which the person's individual's assets and the assets of the person's individual's spouse remaining after the transfer produce income which, when added to other income available to the person individual and to the person's individual's spouse totals an amount insufficient to meet all living expenses and medical costs reasonably anticipated to be incurred by the person individual and by the person's individual's spouse in the month of transfer and in the thirty-five months, or fifty-nine months in the case of a transfer to a trust, following the month of transfer;
- b. In any case in which an inquiry about medicaid benefits or benefits under this chapter was made, by or on behalf of the person individual to any other person individual, before the date of the transfer;
- c. In any case in which the person individual or the person's individual's spouse was an applicant for or recipient of medicaid or benefits under this chapter before the date of transfer;
- d. In any case in which a transfer is made by or on behalf of the person's individual's spouse, if the value of the transferred income or asset, when added to the value of the person's individual's other assets, would exceed asset limits; or
- e. In any case in which the transfer was made, on behalf of the person individual or the person's individual's spouse, by a guardian, conservator, or attorney in fact, to the guardian, conservator, or attorney in fact or to any spouse, child, grandchild, brother, sister,

niece, nephew, parent, or grandparent, by birth, adoption, or marriage, of the guardian, conservator, or attorney in fact.

4. An applicant or recipient who claims that income or assets were transferred exclusively for a purpose other than to qualify for medicaid or benefits under this chapter must show that a desire to receive medicaid or benefits under this chapter played no part in the decision to make the transfer and must rebut any presumption arising under subsection 3. The fact, if it is a fact, that the person individual would be eligible for medicaid or benefits under this chapter had the person's individual's spouse not transferred income or assets for less than fair market value, is not evidence that the income or assets were transferred exclusively for a purpose other than to qualify for medicaid or benefits under this chapter.
5. If the transferee of any income or asset is the child, grandchild, brother, sister, niece, nephew, parent, or grandparent of the person individual or the person's individual's spouse, services or assistance furnished by the transferee to the person individual or the person's individual's spouse may not be treated as consideration for the transferred income or asset unless the transfer is made pursuant to a valid written contract entered into prior to rendering the services.
6. A transfer is complete when the person individual, or the person's individual's spouse, making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.
7. For purposes of this section:
  - a. Fair market value is received:
    - (1) In the case of an asset not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, when one hundred percent of apparent fair market value is received;
    - (2) In the case of an asset subject to reasonable dispute concerning its value, when seventy-five percent of estimated fair market value is received; and
    - (3) In the case of income, when one hundred percent of apparent fair market value is received.
  - b. "Uncompensated value" means the difference between fair market value and the value of any consideration received.



8. This section is applicable to all transfers whenever made.

**History:** Effective May 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC ~~50-06-15~~ 50-06-16, 50-24.5-02(8)

**Law Implemented:** NDCC 50-24.5

**75-02-10-09. Residency.** For purposes of this chapter:

1. ~~A person~~ An individual is a resident of this state if:

a. The ~~person~~ individual is not living in an institution and is living in this state:

(1) With intent to remain in this state permanently or for an indefinite period; or

(2) Without intent if the ~~person~~ individual is incapable of stating intent.

b. The ~~person~~ individual is living in an institution outside this state and was receiving a benefit under North Dakota Century Code chapter 50-01 immediately before January 1, 1995.

c. The ~~person~~ individual was placed in an out-of-state institution by a county agency or the department while the ~~person~~ individual was incapable of indicating intent.

d. The ~~person~~ individual is living in an in-state institution, has lived in that institution for at least thirty days, and was not placed in that institution by another state. ~~A person~~ An individual placed in an institution by another state is a resident of the state making the placement. Any action beyond providing information to the ~~person~~ individual and the ~~person's~~ individual's family constitutes arranging or making a state placement. The following actions do not constitute state placement:

(1) Providing basic information about this chapter and information about the availability of this chapter; or

(2) Assisting ~~a person~~ an individual in locating an institution in this state, if the ~~person~~ individual is capable of indicating intent and independently decides to move.

2. A person An individual who is a resident of this state is a resident of the county in which the person individual is a resident for purposes of receipt of benefits under North Dakota Century Code chapter 50-01.

**History:** Effective May 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC ~~50-06-15~~ 50-06-16, 50-24.5-02(8)

**Law Implemented:** NDCC 50-24.5

#### **75-02-10-10. County administration.**

1. Except as provided in subsection 2, the county agency of the county where the applicant or recipient is living must be responsible for the administration of the program with respect to that applicant or recipient.
2. When a recipient moves from one county to another, the county agency in the outgoing county continues to be responsible for the administration of the program with respect to that recipient until the last day of the month after the month in which the recipient moved to the incoming county.
- ~~3. Each county's share of the total of all counties' shares of the cost of basic care supplementation under North Dakota Century Code chapter 50-24.5 must be determined, as of June first of each year, for purposes of the next calendar year, to be equal to one-fifth of the total of that county's proportion of the North Dakota totals of all the following factors:~~
  - ~~a. The population of persons age sixty-five and older, as derived from the latest population estimates available from the United States bureau of the census;~~
  - ~~b. The total taxable valuation of property subject to the general property tax, as derived from the table of values for taxable valuation for each county in the most recent report of property valuations available from the office of the state tax commissioner;~~
  - ~~c. The total number of aged, blind, and disabled recipients of medicaid benefits as derived from records of the department for the preceding calendar year;~~
  - ~~d. The county per capita income for each county, as derived from compilations of the United States department of commerce, bureau of economic analysis, multiplied times the total population of each county, as derived from the latest population estimates available from the United States bureau of the census; and~~
  - ~~e. The total average number of occupied basic care beds, in facilities for which rates are set pursuant to North Dakota Century Code~~

~~section 50-06-14.3 or subsection 3 of North Dakota Century Code section 50-24.5-02, in the preceding calendar year, as derived from compiled reports of the department of health for each reported bed, multiplied times the reasonable daily rate for the basic care facility providing that bed, as determined by the department of human services pursuant to North Dakota Century Code section 50-06-14.3 or subsection 3 of North Dakota Century Code section 50-24.5-02, and in effect on the preceding December thirty-first, multiplied times three hundred sixty-five.~~

**History:** Effective January 1, 1996; amended effective January 1, 1997; June 1, 2002.

**General Authority:** NDCC ~~50-06-15~~ 50-06-16, 50-24.5-02(8)

**Law Implemented:** NDCC 50-24.5



**JULY 2002**

**AGENCY SYNOPSIS:** The department proposed new North Dakota Administrative Code Chapter 75-03-34 regarding assisted living facility registration and conducted a public hearing on those rules on January 22, 2002, and received written comment on those proposed rules until 5:00 p.m. on February 21, 2002.

75-03-34-01, Definitions: This section is created to define "activities of daily living"; "assisted living facility"; "department"; "individualized support services"; "living unit"; and "medication management".

75-03-34-02, Registration: This section is created to describe the registration process required of all assisted living facilities in North Dakota.

75-03-34-03, Revocation of Registration: This section is created to describe when and how the department of human services may deny or revoke an assisted living facility's registration and what a facility must do when such registration is revoked.

75-03-34-04, Complaints: This section is created to describe how the department shall receive complaints made by, or on behalf of, assisted living facility residents and how the department shall forward complaints regarding assisted living facilities to the appropriate agency, entity, or program for investigation. It also provides that the department shall request the agency to which complaints are referred to report its findings and disposition of the complaint to the department.

**CHAPTER 75-03-34**  
**REGISTRATION OF ASSISTED LIVING FACILITIES**

<u>Section</u>	
<u>75-03-34-01</u>	<u>Definitions</u>
<u>75-03-34-02</u>	<u>Registration</u>
<u>75-03-34-03</u>	<u>Revocation of Registration</u>
<u>75-03-34-04</u>	<u>Complaints</u>
<u>75-03-34-05</u>	<u>Enforcement</u>

**75-03-34-01. Definitions.**

1. "Activities of daily living" means bathing, dressing, toileting, transferring, eating, bed mobility, medication management, and personal hygiene.
2. "Assisted living facility" means any building or structure containing a series of living units operated as one business entity to provide services to five or more individuals who are aged or disabled adults and who are not related by blood or marriage to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that makes available individualized support services to accommodate an individual's needs and abilities to maintain as much independence as possible. It does not include a facility that is licensed as a basic care facility or a congregate housing facility.
3. "Department" means the North Dakota department of human services.
4. "Individualized support services" means services designed to provide assistance to adults who may have physical or cognitive impairments and who require at least a moderate level of assistance with one or more activities of daily living.
5. "Living unit" means a portion of an assisted living facility occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.
6. "Medication management" means providing assistance to an assisted living facility tenant with prescribed medications.

**History:** Effective January 1, 2002.

**General Authority:** NDCC 50-24.5-02.1

**Law Implemented:** NDCC 50-24.5-01

#### **75-03-34-02. Registration.**

1. An assisted living facility shall apply to the department for a certificate of registration in the form and manner prescribed by the department. The department shall notify a registered assisted living facility of the need to renew its registration at least thirty days prior to expiration of that registration. The notice must include the form required to renew registration.
2. An application for registration is not complete until the applying assisted living facility submits all required information and verifications to the department.
3. The department shall approve or deny an application for a registration certificate within thirty days of the department's receipt of complete application materials from an assisted living facility.

4. In order to receive and maintain a certificate of registration, an assisted living facility shall:
  - a. Pay a registration fee of seventy-five dollars to the department annually. The registration fee shall not be prorated nor is any part refundable;
  - b. Maintain a written agreement contract with each tenant that includes the rates for rent and services provided to the tenant, payment terms, refund policies, rate changes, tenancy criteria, and living unit inspections;
  - c. Provide each tenant with written notice of how a tenant may report a complaint regarding the assisted living facility, which includes the telephone number of the department's senior info-line and the address of the aging services division of the department; and
  - d. Certify that operation of its facility is in compliance with all applicable federal, state, and local laws and, upon request, make available to the department copies of current certifications, licenses, permits, and other similar documents evidencing compliance with such laws.
5. A registration certificate is valid for the calendar year in which it is issued. A registration certificate is not subject to sale, assignment, or other transfer, voluntary or involuntary. The registration certificate is not valid for any premises or entity other than those for which it was originally issued.
6. An assisted living facility must submit to the department an application for registration renewal thirty days prior to the calendar yearend. An assisted living facility is subject to the same requirements and has the same responsibility to furnish information for a renewal of its registration certificate as it did during its initial application.
7. An assisted living facility shall display its registration certificate in a conspicuous place on its premises.

**History:** Effective January 1, 2002.

**General Authority:** NDCC 50-24.5-02.1

**Law Implemented:** NDCC 50-24.5-02.1

#### **75-03-34-03. Revocation of registration.**

1. The department may deny or revoke an assisted living facility's registration if:

- a. The application for registration or renewal of registration or supporting documents contain fraudulent or untrue representations or if the registration was otherwise issued based upon bribery or fraudulent or untrue representations;
  - b. The assisted living facility is in violation of this chapter or is unwilling or unable to conform to the requirements of this chapter;
  - c. The assisted living facility, or the premises proposed for the assisted living facility, is not or will not be maintained according to this chapter;
  - d. The assisted living facility is denied any license necessary under federal, state, or local law or such license has been revoked;
  - e. The assisted living facility refuses to allow the department access to any material or information necessary to determine compliance with registration requirements; or
  - f. The assisted living facility demonstrates a pattern of failing to abide by the terms of its contract with tenants.
2. Except when conditions exist that present imminent danger to assisted living facility tenants, the effective date of a revocation of a registration certificate shall be thirty days from the date the department provides written notification to the assisted living facility of the department's decision to revoke the registration.
  3. The revocation notice to the assisted living facility must include the basis of the department's decision, the effective date of the revocation, and information regarding the assisted living facility's right to request reconsideration by the department.
  4. The assisted living facility must notify all tenants and third-party payers of the department's revocation of its registration within fifteen days from the date of the final revocation notice.

**History:** Effective January 1, 2002.

**General Authority:** NDCC 50-24.5-02.1

**Law Implemented:** NDCC 50-24.5-02.1

#### **75-03-34-04. Complaints.**

1. The department shall receive complaints made by, or on behalf of, assisted living facility tenants. The department shall forward complaints regarding assisted living facilities to the appropriate agency, entity, or program for investigation.



2. The department shall request the agency to which complaints are referred to report its findings and disposition of the complaint to the department.

**History:** Effective January 1, 2002.

**General Authority:** NDCC 50-24.5-02.1

**Law Implemented:** NDCC 50-24.5-02.1

#### **75-03-34-05. Enforcement.**

1. The department shall provide written notice of the need to register to any individual, institution, organization, limited liability company, or public or private corporation that provides assisted living services or uses the term assisted living in its marketing which does not have a registration approved by the department.
2. Sixty days after the written notification of noncompliance with annual registration, the department may assess a fine of up to fifty dollars per day against any individual, institution, organization, limited liability company, or public or private corporation that provides assisted living services or uses the term assisted living in its marketing without a registration approved by the department.

**History:** Effective January 1, 2002.

**General Authority:** NDCC 50-24.5-02.1

**Law Implemented:** NDCC 50-24.5-02.1



**TITLE 81**  
**TAX COMMISSIONER**



JUNE 2002

CHAPTER 81-01.1-01

**81-01.1-01-03. Examination or investigation for purposes of an audit.**

In order to determine the accuracy of a tax return, the correct tax liability, or whether a filing requirement exists, the tax commissioner may investigate or examine material including, but not limited to, ~~a taxpayer's books, records, memoranda, computer printouts, accounts, vouchers, corporate or committee minutes~~ the taxpayer's records as defined in subsection 1 of section 81-01.1-04-03, any other pertinent documents, tangible personal property, equipment, computer systems, business facilities, plants, and shops. ~~If retained in an automated fashion, the tax commissioner may require computer data be made available on computer disk, diskette, or tape.~~

A taxpayer must make all items and places available to the tax commissioner upon request. The tax commissioner may require the taxpayer to be present to answer questions, provide testimony, and submit proof of material or information examined. The taxpayer must answer all questions to the best of that taxpayer's information and ability.

An examination or investigation by the tax commissioner may extend to any person having access to information which may be relevant to an audit of a taxpayer.

**History:** Effective July 1, 1985; amended effective May 1, 1991; June 1, 2002.

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

**Law Implemented:** NDCC 57-01-02

**81-01.1-01-06. Protest of notice of determination or refund change.**

1. A taxpayer has the right to protest any notice of determination or notice of refund change only if a protest is perfected in full and timely compliance with the requirements contained in subsections 2 and 3.
2. The taxpayer has thirty days, or ninety days if the taxpayer is outside the United States, after the notice of determination or refund change to

file a notice of protest. This notice of protest must be signed by the taxpayer or a duly authorized agent and must contain the following information:

- a. Taxpayer's name, address, telephone ~~and number~~, social security number; or federal identification number, and sales tax permit number, if applicable.
- b. Name, address, and telephone number of taxpayer's agent, if any, for the purpose of the protest.
- c. Type of tax and tax periods under protest.
- d. Amount under protest.

The taxpayer may file an oral protest provided the oral protest is made within the thirty days and is confirmed in writing.

3. The taxpayer has up to ninety days after the notice of determination or refund change within which to file a written statement of grounds for protest setting forth the taxpayer's specific reasons for opposing the determination or refund change, unless the taxpayer and tax commissioner agree to extend the ninety days set forth in this subsection.
4. If the notice of protest or the statement of grounds for protest is served by mail, certified mail is recommended.
5. If the taxpayer fails to timely file either the notice of protest or statement of grounds, the notice of determination or the notice of refund change becomes finally and irrevocably fixed.
6. The tax commissioner shall acknowledge receipt of the statement of grounds within fifteen days of receipt of the statement of grounds. If the taxpayer fails to specifically state the reasons and facts for opposing the determination or refund change, the tax commissioner shall give the taxpayer thirty days to perfect the statement of grounds. The tax commissioner shall state specifically the additional information required.
7. Amounts of tax not protested are irrevocably fixed and must be paid.

**History:** Effective May 1, 1991; amended effective August 1, 1994; June 1, 2002.

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

**Law Implemented:** NDCC 57-01-02, 57-01-11

**CHAPTER 81-01.1-04**  
**MODEL RECORDKEEPING AND RETENTION REGULATION**

<u>Section</u>	
<u>81-01.1-04-01</u>	<u>Purpose</u>
<u>81-01.1-04-02</u>	<u>Definitions</u>
<u>81-01.1-04-03</u>	<u>Recordkeeping Requirements - General</u>
<u>81-01.1-04-04</u>	<u>Recordkeeping Requirements - Machine-Sensible Records</u>
<u>81-01.1-04-05</u>	<u>Records Maintenance Requirements</u>
<u>81-01.1-04-06</u>	<u>Access to Machine-Sensible Records</u>
<u>81-01.1-04-07</u>	<u>Taxpayer Responsibility and Discretionary Authority</u>
<u>81-01.1-04-08</u>	<u>Alternative Storage Media</u>
<u>81-01.1-04-09</u>	<u>Effect on Hardcopy Recordkeeping Requirements</u>
<u>81-01.1-04-10</u>	<u>Records Retention - Time Period</u>

**81-01.1-04-01. Purpose.** The purpose of this regulation is to define the requirements imposed on taxpayers for the maintenance and retention of books, records, and other sources of information. It is also the purpose of the regulation to address these requirements where all or a part of the taxpayer's records are received, created, maintained, or generated through various computer, electronic, and imaging processes and systems.

**History:** Effective June 1, 2002.

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

**Law Implemented:** NDCC 57-01-02

**81-01.1-04-02. Definitions.** For purposes of this chapter, these terms shall be defined as follows:

1. "Data base management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a data base.
2. "Electronic data interchange" or "EDI" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.
3. "Hardcopy" means any documents, records, reports, or other data printed on paper.
4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hardcopy or as an optical image.
6. "Taxpayer" as used in this chapter means an individual, partnership, firm, corporation, joint venture, association, estate, fiduciary, trust receiver, or any other group or combination acting as a unit and the plural as well as the singular number who is or may be required to file a tax return under North Dakota Century Code title 57 or who has or may have information relating to any matter which the tax commissioner deems relevant to a determination of tax liability under North Dakota Century Code title 57.

**History:** Effective June 1, 2002.

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

**Law Implemented:** NDCC 57-01-02

#### **81-01.1-04-03. Recordkeeping requirements - General.**

1. A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability under North Dakota Century Code title 57. All required records must be made available on request by the tax commissioner or its authorized representative. Such records shall include any original and nonidentical copy of any communication or other transmission of information that has been reduced by any means into any tangible form or medium or is electronically stored information, including written, electronic, magnetic, or photographic form, of any kind or description and including all records, reports, papers, accounting schedules, books, letters, notes, memoranda, e-mail, and other correspondence, reports and recordings of telephone and other conversations, tape recordings, contracts, evaluations, ledgers, journals, books or records of accounts, summaries of accounts, desk calendars, minutes, drawings, photographs, inspection reports, test reports, diaries, notebooks, sketches, graphs, charts, and press releases, all whether in the taxpayer's possession or under the control of any other individual or entity with knowledge of the information requested.
2. If a taxpayer retains records required to be retained under this regulation in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the tax commissioner in machine-sensible format upon the tax commissioner's request.
3. Nothing in this regulation shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or



reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this regulation. However, this subsection shall not relieve the taxpayer of the obligation to comply with subsection 2.

**History:** Effective June 1, 2002.

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

**Law Implemented:** NDCC 57-01-02

**81-01.1-04-04. Recordkeeping requirements - Machine-sensible records.**

**1. General requirements.**

- a. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the tax commissioner upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this regulation are met.
- b. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.
- c. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

**2. Electronic data interchange requirements.**

- a. When a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the tax commissioner to interpret the coded information.
- b. The taxpayer may capture the information necessary to satisfy subdivision a at any level within the accounting system and need not retain the original EDI transaction records provided the audit

trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the tax commissioner. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

**3. Electronic data processing systems requirements.** The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

**4. Business process information.**

a. Upon the tax commissioner's request, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

b. The taxpayer shall be capable of demonstrating:

(1) The functions being performed as they relate to the flow of data through the system;

(2) The internal controls used to ensure accurate and reliable processing; and

(3) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c. The following specific documentation is required for machine-sensible records retained pursuant to this regulation:

(1) Record formats or layouts;

(2) Field definitions, including the meaning of all codes used to represent information;

- (3) File descriptions (e.g., data set name); and
- (4) Detailed charts of accounts and account descriptions.

**History:** Effective June 1, 2002.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 57-01-02

**81-01.1-04-05. Records maintenance requirements.**

- 1. The tax commissioner recommends but does not require that taxpayers refer to the national archives and record administration's standards [36 CFR, part 1234, July 1, 1995, edition], for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of backup copies, and the use of periodic testing to confirm the continued integrity of the records.
- 2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

**History:** Effective June 1, 2002.  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 57-01-02

**81-01.1-04-06. Access to machine-sensible records.**

- 1. The manner in which the tax commissioner is provided access to machine-sensible records as required in subsection 2 of section 81-01.1-04-03 may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.
- 2. Such access will be provided in one or more of the following manners:
  - a. The taxpayer may arrange to provide the tax commissioner with the hardware, software, and personnel resources to access the machine-sensible records.
  - b. The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.
  - c. The taxpayer may convert the machine-sensible records to a standard record format specified by the tax commissioner, including copies of files, on a magnetic medium that is agreed to by the tax commissioner.

- d. The taxpayer and the tax commissioner may agree on other means of providing access to the machine-sensible records.

**History:** Effective June 1, 2002.

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

**Law Implemented:** NDCC 57-01-02

**81-01.1-04-07. Taxpayer responsibility and discretionary authority.**

1. In conjunction with meeting the requirements of section 81-01.1-04-04, a taxpayer may create files solely for the use of the tax commissioner. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of section 81-01.1-04-04. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.
2. A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

**History:** Effective June 1, 2002.

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

**Law Implemented:** NDCC 57-01-02

**81-01.1-04-08. Alternative storage media.**

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this regulation to microfilm, microfiche, or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.
2. Microfilm, microfiche, and other storage-only imaging systems must meet the following requirements:
  - a. Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. Such documentation must, at a minimum, contain a sufficient description to allow an original document to be followed through

the conversion system as well as internal procedures established for inspection and quality assurance.

- b. Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under section 81-01.1-04-10.
- c. Upon request by the tax commissioner, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.
- d. When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral which enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.
- e. All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.
- f. There is no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

**History:** Effective June 1, 2002.

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

**Law Implemented:** NDCC 57-01-02

**81-01.1-04-09. Effect on hardcopy recordkeeping requirements.**

- 1. Except as otherwise provided in this section, the provisions of this regulation do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in section 81-01.1-04-08.
- 2. If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.
- 3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to

determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in section 81-01.1-04-04.

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.
5. Nothing in this section shall prevent the tax commissioner from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

**History:** Effective June 1, 2002.

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

**Law Implemented:** NDCC 57-01-02

**81-01.1-04-10. Records retention - Time period.** Nothing contained in this chapter modifies any previous policy adopted by the tax commissioner relating to the period of time records must be retained by the taxpayer, unless the tax commissioner had provided in writing that the records are no longer required. All records required to be retained under this chapter shall be retained according to the record retention schedule required for each tax type.

**History:** Effective June 1, 2002.

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

**Law Implemented:** NDCC 57-01-02

## CHAPTER 81-03-01.1

**81-03-01.1-03. Interest on obligations of the United States and of the states and their political subdivisions.** Interest received from obligations of the United States or of its possessions and from this state or its political subdivisions is not subject to income tax imposed by this state.

Interest received from obligations of any other state or its political subdivisions is subject to income tax imposed by this state for a taxpayer who files an individual income tax return form ND-2 or form 37, but is not subject to income tax imposed by this state for a taxpayer who files an individual income tax return form ND-1 or form 37-S.

"Obligations" as used in this section means only those obligations, such as municipal or other government bonds, arising out of the borrowing power of the federal government or a state government or its political subdivisions.

**History:** Effective July 1, 1985; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-01.2, 57-38-01.3, 57-38-30.3

### **81-03-01.1-06. Income tax exemption for new and expanding business.**

1. When a taxpayer is granted an exemption from income tax pursuant to North Dakota Century Code chapter 40-57.1, the exemption must be prorated, when necessary, in the first and last years in order to exempt income for a period not to exceed sixty months.
2. The amount of the yearly income tax exemption for new and expanding business is limited to income earned from the new business or expansion in each tax year reduced by the amount of federal tax assignable to the North Dakota exempt income which was included in federal taxable income.
3. When the project operator is a partnership, S corporation, or limited liability company, the income tax exemption flows through to the partners, shareholders, and members.
4. The conditions for reapplication set forth in North Dakota Century Code chapter 40-57.1 apply to the income tax exemption. A project operator must reapply for the income tax exemption if these conditions are met.
5. The office of the state tax commissioner must be notified of any changes in ownership of a new industry which has been granted an income tax exemption. A change of ownership includes transfer of a partnership interest, a stock interest in a subchapter S corporation, or a membership in a limited liability company.

6. The income tax exemption may not be claimed by an individual taxpayer on ~~North Dakota~~ individual income tax form ND-1 or form 37-S.
7. A taxpayer with both exempt and nonexempt activities shall prorate its income pursuant to the provisions of North Dakota Century Code chapter 57-38.1.
  - a. If the taxpayer has only North Dakota activity, exempt income must be determined by multiplying income from all activities, exempt and nonexempt, by a fraction, the numerator of which is the sum of its exempt property, sales, and payroll factors and the denominator of which is three.

EXAMPLE:

Facts:	Exempt Plant	Other North Dakota Activity	Total North Dakota Activity
Property	\$5,000,000	\$10,000,000	\$15,000,000
Payroll	\$750,000	\$1,000,000	\$1,750,000
Sales	\$20,000,000	\$35,000,000	\$55,000,000
Apportionable income	\$50,000,000		
Federal tax liability	\$17,500,000		

Determine North Dakota exempt income:

- (1) Compute apportionment factor of exempt activities.

Property factor =	$\$5,000,000/\$15,000,000 =$	.333333
Payroll factor =	$\$750,000/\$1,750,000 =$	.428571
Sales factor =	$\$20,000,000/\$55,000,000 =$	<u>.363636</u>
	$1.125540/3 =$	.375180

- (2) Compute exempt income.

Apportionable income	\$50,000,000
Federal tax liability	<u>\$17,500,000</u>
North Dakota income after federal tax deduction	\$32,500,000
Apportionment factor of exempt activities	<u>.375180</u>
Exempt income	\$12,193,350

- b. If the taxpayer has multistate business activity, North Dakota income must first be determined by including all exempt and nonexempt activity in apportionable income and in the apportionment factor. North Dakota exempt income is then determined as in subdivision a.



EXAMPLE:

Multistate corporation

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

Total activity within and without North Dakota

Property \$100,000,000

Payroll \$5,000,000

Sales \$200,000,000

Determine North Dakota exempt income:

- (1) Compute the North Dakota apportionment factor, including tax-exempt activity.

$$\begin{aligned} \text{Property factor} &= \frac{\$15,000,000}{\$100,000,000} = .150000 \\ \text{Payroll factor} &= \frac{\$1,750,000}{\$5,000,000} = .350000 \\ \text{Sales factor} &= \frac{\$55,000,000}{\$200,000,000} = \underline{.275000} \\ & .775000/3 = .258333 \end{aligned}$$

- (2) Compute the apportionment factor of the North Dakota exempt activities. For this example, the computation would be the same as that in paragraph 1 of subdivision a and would yield a factor of .375180.

- (3) Compute exempt income.

$$\begin{aligned} \text{Apportionable income} & \quad \$50,000,000 \\ \text{North Dakota apportionment} & \quad \underline{.258333} \\ \text{factor} & \\ \text{Income apportioned to North} & \quad \$12,916,650 \\ \text{Dakota before federal tax} & \\ \text{deduction} & \end{aligned}$$

$$\begin{aligned} \text{Federal tax liability} & \quad \$17,500,000 \\ \text{North Dakota apportionment} & \quad \underline{.258333} \\ \text{factor} & \\ \text{Federal tax deduction} & \quad \$4,520,827 \end{aligned}$$

$$\begin{aligned} \text{North Dakota income after} & \quad \$8,395,823 \\ \text{federal tax deduction} & \\ \text{Apportionment factor of} & \quad \underline{.375180} \\ \text{exempt activities} & \\ \text{Exempt income} & \quad \$3,149,945 \end{aligned}$$

- c. When a partial exemption on a project or plant has been granted, the percentage of the project's nonexempt property, payroll, and sales would be added to the other North Dakota taxable activity's factors. For instance, a twenty percent exemption would mean eighty percent of the project's property, payroll, and sales would be added to the other North Dakota factors creating a taxable activity.
- d. When a company has only one operating facility which has been granted a partial exemption, North Dakota taxable income shall be computed based on total income of the operation, and a percentage of the income which is equal to the percentage of the exemption shall be deducted from the total.

**History:** Effective March 1, 1990; amended effective June 1, 1992; August 1, 1994; April 1, 1995; July 1, 1998; June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 40-57.1

**81-03-01.1-09. Requirement to report federal changes.**

1. The following provisions are applicable for purposes of interpreting subsection 1 of North Dakota Century Code section 57-38-34.4:
  - a. If a change or correction to federal taxable income or federal income tax liability is initiated by the United States internal revenue service, the change or correction must be reported to the commissioner even if it does not result in an underpayment or an overpayment of federal income tax.
  - b. "Final determination" means a decision, action, or date from which no further action is taken by the taxpayer or the United States internal revenue service to resolve any dispute relating to the change or correction which was made to the taxpayer's federal taxable income or federal income tax liability. A final determination has occurred if any of the following circumstances apply:
    - (1) A taxpayer receives a notice or other correspondence from the United States internal revenue service which makes an adjustment to the taxpayer's federal taxable income based on:
      - (a) A mathematical or clerical error.
      - (b) Any other change or correction where if the taxpayer has paid or arranged to pay the underpayment of federal income tax, or where if the United States internal

revenue service has credited or refunded to the taxpayer an overpayment of federal income tax. A final determination does not occur, however, if a taxpayer pays the tax and then files a claim for credit or refund with the United States internal revenue service.

- (2) A taxpayer waives the restrictions on assessment and collection of all or any part of an underpayment of federal income tax by signing a federal form 870 or any other form prescribed for this purpose by the United States internal revenue service. A final determination does not occur with respect to any part of the underpayment which is not covered by the waiver. ~~Where~~ If the signature of an authorized representative of the United States internal revenue service is required to execute this waiver, the date of final determination is when the taxpayer receives notice of the signing. A final determination does not occur, however, if a taxpayer pays the tax and then files a claim for credit or refund with the United States internal revenue service.
- (3) A taxpayer receives a federal statutory notice of deficiency and does not timely file a petition with the United States tax court for redetermination of the assessed underpayment of federal income tax. The date of final determination is when the time period within which to file the petition expires. A final determination does not occur, however, if a taxpayer pays the tax and then files a claim for credit or refund with the United States internal revenue service.
- (4) A closing agreement is executed pursuant to United States Internal Revenue Code section 7121 [26 U.S.C. 7121]. The date of final determination is when the taxpayer receives notice of the signing of the closing agreement by an authorized representative of the United States commissioner of internal revenue.
- (5) A federal court of law issues a decision which is not appealed or is not subject to appeal.
- (6) A federal court of law approves a voluntary agreement stipulating final disposition of a case.
- (7) If a taxpayer files a claim for credit or refund of all or any part of an underpayment of federal income tax, as described in paragraph 1, 2, or 3 ~~of this subdivision~~, a final determination has occurred if any of the following circumstances apply:

- (a) The taxpayer receives notice of the disallowance of the claim for credit or refund from the United States internal revenue service and the taxpayer does not appeal the disallowance or file a suit for refund.
  - (b) The taxpayer receives notice of the allowance of the claim for credit or refund from the United States internal revenue service.
  - (c) Receipt of the refund from the United States internal revenue service, if no prior notice is received.
  - (d) The provisions of paragraph 4, 5, or 6 of this subdivision apply.
- 2. The following provisions are applicable for purposes of interpreting subsection 2 of North Dakota Century Code section 57-38-34.4:
  - a. If a taxpayer initiates the filing of the amended federal income tax return, the taxpayer must also file an amended state income tax return even if it does not result in payment of additional tax.
  - b. To request a credit or refund of tax, a taxpayer must file an amended state income tax return either within the time period prescribed in subsection 1 of North Dakota Century Code section 57-38-40 or within the ninety-day time period prescribed in subsection 2 of North Dakota Century Code section 57-38-34.4.
- 3.
  - a. A change or correction to federal taxable income or federal income tax liability must be reported on an amended state income tax return except as provided in subdivision b of this subsection.
  - b. An alternative report may be elected to report an increase in North Dakota tax liability as a result of a change or correction to federal taxable income or federal income tax liability. The alternative report must contain the following:
    - (1) A statement that the information is submitted in lieu of an amended return pursuant to subdivision b of subsection 3 of section 81-03-01.1-09.
    - (2) A description of the change or correction to federal taxable income or federal tax liability and the effect which the change or correction has on the statutory adjustments provided for in North Dakota Century Code sections 57-38-01.2 and 57-38-01.3.

- (3) An allocation or apportionment of the change to North Dakota tax liability and a computation of the adjusted North Dakota tax liability.

This alternative report is subject to audit and assessment as if it were an amended return.

- c. When reporting a change or correction to federal taxable income or federal income tax liability pursuant to subsection 1 of North Dakota Century Code section 57-38-34.4, a taxpayer must also submit the following items:

- (1) A copy of the applicable federal waivers.

- (2) A copy of the documentation evidencing that a final determination has been made with respect to the federal change or correction.

4. A change or correction to federal taxable income or federal income tax liability that affects a year other than the year in which the change or correction occurs must also be reported in accordance with subsection 3.

**History:** Effective November 1, 1991; amended effective November 1, 1992; June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-34.4

## CHAPTER 81-03-02.1

### 81-03-02.1-01. Credit for taxes paid to another state.

1. A resident who pays income tax to another state or territory of the United States or the District of Columbia on income which is also taxed by this state, is entitled to a tax credit. The tax credit may be deducted from the North Dakota income tax liability. A copy of the income tax return filed with another jurisdiction must be filed with the North Dakota income tax return and the tax commissioner may require the taxpayer to have the copy certified by the other jurisdiction.
2. If a North Dakota resident is paying income tax to more than one jurisdiction other than North Dakota, on income which is also taxed by this state, a separate computation must be made to determine the amount of the tax credit available from each jurisdiction. These separate tax credits must be added together to determine the total tax credit which may be reported on the taxpayer's North Dakota tax return.
3. A taxpayer who is a part-year resident of North Dakota may claim a credit for taxes paid to another state only if the income taxed by North Dakota and the other state was earned or received during the time the taxpayer was a North Dakota resident. A copy of the income tax return filed with the other state must be filed with the North Dakota income tax return. The tax commissioner may require a certified copy of the other state's return.
4. If married taxpayers file a joint federal income tax return and each spouse had different states of residence during the tax year, the credit is available to the spouse who is required to file a North Dakota income tax return.
5. Subsections 3 and 4 are effective for tax years beginning after December 31, 2000.

**History:** Effective July 1, 1985; amended effective July 1, 1989; June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-04, 57-38-30.3

### 81-03-02.1-03. Moving expenses - Adjustment.

1. An individual who moves out of this state and who claims moving expenses as a deduction on that individual's federal income tax return for the year in which the move was made may not deduct those expenses for purposes of computing North Dakota taxable income on individual income tax form ND-2 or form 37.

2. An individual who moves into this state and who claims moving expenses as a deduction on that individual's federal income tax return for the year in which the move was made may deduct those expenses for the purpose of computing North Dakota taxable income on individual income tax form ND-2 or form 37.

**History:** Effective July 1, 1985; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-01.1

**81-03-02.1-05. Reporting - Income earned by husband and wife.**

Requirements for a husband and wife who file a joint federal income tax return and who elect are required to file separate North Dakota income tax returns include:

1. Income from nonbusiness property owned by one spouse cannot be divided between husband and wife, but must be reported only by the spouse with the ownership interest.
2. Nonbusiness income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other nonbusiness income must be reported by each spouse on the separate tax return as if their federal adjusted gross income was determined separately. Reporting of this income depends on the nature of the ownership interest and is subject to the following:
  - a. A husband and wife owning property as joint tenants with a right of survivorship must each report one-half of the income from the property on their separate North Dakota income tax returns.
  - b. Income from property held by husband and wife as tenants in common must be reported in proportion to their legally enforceable interests in the property.
3. Salary and wages earned by each spouse must be reported by each spouse as if their federal adjusted gross income was determined separately. Reporting of wages and salary by each spouse depends upon the nature of the employment relationship and is subject to the following:
  - a. Wages or compensation for services or labor performed by one spouse with respect to a business or property owned by the other spouse may be reported on a separate North Dakota income tax return if the payment is reasonable for the labor or services actually performed. It is presumed that compensation or wages paid by one spouse to the other are unreasonable and disallowed for separate reporting unless a bona fide employer-employee relationship exists. Evidence of the relationship includes actual services performed,

adherence to regular working hours and standards, and compliance with workers' compensation and unemployment compensation laws.

- b. Wages or compensation for services or labor performed pursuant to an employment agreement with a nonspousal employer is income which may be reported only by the spouse earning the wages.
4. Business income derived from property owned by both spouses, as evidenced by recognized methods of establishing legal ownership, may be allocated between spouses and reported on separate North Dakota income tax returns. The interest of each spouse must be allocated according to the capital interest, the management and control exercised, and the services performed by each spouse according to the following rules:
- a. Allocation of partnership income between spouses is valid only if current partnership information returns have been filed with this state and the federal government and there has been compliance with federal self-employment laws.
  - b. When a business is owned by a husband and wife but one spouse claims all of the income for federal self-employment tax purposes, it is assumed that the claim was made with the full consent of the other spouse. Therefore, all of the income must be claimed for North Dakota income tax purposes by the spouse claiming such income on the federal return. The presumption of consent may be overcome by presentation of evidence sufficient to negate the presumption.
  - c. In order to determine the amount of capital contribution by each spouse, only invested capital which is legally traceable to each spouse is considered. Capital existing under the right, domain, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions that do not effect any real change in ownership of capital between spouses are disregarded in determining capital contribution of the recipient spouse.
  - d. Contribution to management and control of the business must be substantial to be given weight in allocating income. Substantial participation involves legitimate consultation with respect to major business decisions, familiarity with the operations, problems, and policies of the business, and sufficient background and maturity to understand the various demands of the business. General statements as to family discussions are insufficient to demonstrate consultation.



- e. Services which make a direct contribution to the business are given weight in determining the proper allocation of income between spouses. Services performed for the family are not considered rendered for the benefit of the business.

**History:** Effective July 1, 1985; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-34.2

**81-03-02.1-10. Limitations on adjustments available on form ND-2 or form 37.** An individual who files North Dakota individual income tax return form ND-2 or form 37 for the current year may make the following adjustments only if form ND-2 or form 37 was filed for the applicable prior year:

1. Refunds of state and local income taxes may only be deducted on form ND-2 or form 37 if they were reported on federal form 1040 for the current year and if form ND-2 or form 37 was filed for the year in which the state and local income taxes were added back.
2. The deduction provided for in subdivision b of subsection 3 of North Dakota Century Code section 57-38-01 for the amount of accelerated cost recovery system depreciation disallowed in a prior year may only be allowed on form ND-2 or form 37 if form ND-2 or form 37 was filed for the prior year when the disallowance of accelerated cost recovery system depreciation occurred.

**History:** Effective July 1, 1989; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-01(3)(b), 57-38-01.2(1)(f), 57-38-30.3(9)

**81-03-02.1-12. Seed capital investment credit - Limitations on credit - Carryover.** For the purpose of administering

1. The provisions in this subsection apply to the calculation and administration of the credit under North Dakota Century Code chapter 57-38.5; the following apply for tax years beginning before January 1, 2002:
  - 1: a. The credit must first be credited against the taxpayer's income tax liability for the taxpayer's taxable year in which the investment is paid for in full.
  - 2: b. For purposes of applying the annual limitation on the total amount of credits allowed for investments in one qualified business under subsection 6 of North Dakota Century Code section 57-38.5-03, the total amount of investments and the total amount of gross

receipts from out-of-state sales must be determined on a calendar year basis.

- 3: c. For purposes of applying the annual limitation on the total amount of credits allowed for investments in all qualified businesses under North Dakota Century Code section 57-38.5-05, the total amount of investments and related credits must be determined on a calendar year basis.
- 4: d. For purposes of determining whether a taxpayer has reached the annual minimum or maximum amount of investment for which a credit is allowed under subsection 1 of North Dakota Century Code section 57-38.5-03, the total amount of investments must be determined by aggregating all of the investments made by a taxpayer within the taxpayer's taxable year.
- 5: e. Every qualified business shall file with the tax commissioner a written report showing the total amount of its gross receipts from out-of-state sales on a calendar year basis. The report must be filed by January thirty-first following the end of each calendar year. If a qualified business fails to file a written report, the total amount of the credit attributable to investments made in that qualified business during the calendar year for which the report was required to be filed must be disallowed until such time as the report is received by the tax commissioner.
- 6: f. If a taxpayer elects to determine the taxpayer's state income tax liability under North Dakota Century Code section 57-38-30.3, the credit is not allowed in the taxable year of the election or in any subsequent taxable year to which an unused credit may otherwise be carried.
- 7: g. For purposes of applying subsection 3 of North Dakota Century Code section 57-38.5-03, the amount of the credit which may be carried forward from the taxpayer's taxable year in which the related investment was made is the amount of the credit not allowed because of subsection 2 of North Dakota Century Code section 57-38.5-03.
- 8: h. If a partnership makes an investment in a qualified business, and if the taxable year of the partnership differs from the taxable year of the partner, the amount of credit allocated to the partner under subsection 4 of North Dakota Century Code section 57-38.5-03 must first be credited in the partner's taxable year in which the partnership's taxable year ends.

- 9: i. If a taxpayer makes an investment in a qualified business and then sells the investment back to the qualified business within three years of making the investment, the credit must be disallowed. If a taxpayer makes an investment in a qualified business and then sells the investment to a second taxpayer, the credit attributable to the investment must be allowed to the first taxpayer provided the investment is held by the qualified business for three years, and no credit may be allowed to the second taxpayer.
- 10: j. For purposes of subsection 8 of North Dakota Century Code section 57-38.5-03, "controlling interest" means ownership of over fifty percent of the voting stock and over fifty percent of each class of other stock of the corporation.
2. The provisions in this subsection apply to the calculation and administration of the credit under North Dakota Century Code chapter 57-38.5 for taxable years beginning after December 31, 2001:
- a. The credit must first be credited against the taxpayer's income tax liability for the taxpayer's taxable year in which the investment is paid for in full.
  - b. For purposes of applying the annual limitation on the total amount of credits allowed for investments in one qualified business under subsection 6 of North Dakota Century Code section 57-38.5-03, the total amount of investments must be determined on a calendar year basis.
  - c. For purposes of applying the annual limitation on the total amount of credits allowed for investments in all qualified businesses under North Dakota Century Code section 57-38.5-05, the total amount of investments and related credits must be determined on a calendar year basis.
  - d. For purposes of determining whether a taxpayer has reached the annual minimum or maximum amount of investment for which a credit is allowed under subsection 1 of North Dakota Century Code section 57-38.5-03, the total amount of investments must be determined by aggregating all of the investments made by a taxpayer within the taxpayer's taxable year.
  - e. For purposes of applying subsection 3 of North Dakota Century Code section 57-38.5-03, the amount of the credit which may be carried forward from the taxpayer's taxable year in which the related investment was made is the amount of the credit not allowed because of subsection 2 of North Dakota Century Code section 57-38.5-03.

- f. If a partnership makes an investment in a qualified business, and if the taxable year of the partnership differs from the taxable year of the partner, the amount of credit allocated to the partner under subsection 4 of North Dakota Century Code section 57-38.5-03 must first be credited in the partner's taxable year in which the partnership's taxable year ends.
  
- g. If a taxpayer makes an investment in a qualified business and then sells the investment back to the qualified business within three years of making the investment, the credit must be disallowed. If a taxpayer makes an investment in a qualified business and then sells the investment to a second taxpayer, the credit attributable to the investment must be allowed to the first taxpayer provided the investment is held by the qualified business for three years, and no credit may be allowed to the second taxpayer.
  
- h. For purposes of subsection 8 of North Dakota Century Code section 57-38.5-03, "controlling interest" means ownership of over fifty percent of the voting stock and over fifty percent of each class of other stock of the corporation.

**History:** Effective August 1, 1994; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38.5

**81-03-02.1-12.1. Agricultural commodity processing facility investment credit - Limitations on credit - Carryover.** For the purpose of administering the credit under North Dakota Century Code chapter 57-38.6, the following apply:

1. The credit must first be credited against the taxpayer's income tax liability for the taxpayer's taxable year in which the investment is received by the qualified business. "Received" means that the qualified business has exclusive access to the funds.
  
2. For purposes of applying the annual limitation on the total amount of credits allowed for investments in all qualified business under North Dakota Century Code section 57-38.6-03, the total amount of investments and related credits must be determined on a calendar year basis.
  
3. For purposes of applying subsection 3 of North Dakota Century Code section 57-38.6-03, the amount of the credit which may be carried forward from the taxpayer's taxable year in which the related investment was made is the amount of the credit not allowed because of subsection 2 of North Dakota Century Code section 57-38.6-03.

4. If a partnership makes an investment in a qualified business, and if the taxable year of the partnership differs from the taxable year of the partner, the amount of credit allocated to the partner under subsection 4 of North Dakota Century Code section 57-38.6-03 must first be credited in the partner's taxable year in which the partnership's taxable year ends.
  
5. If a taxpayer makes an investment in a qualified business and then sells the investment back to the qualified business within three years of making the investment, the credit must be disallowed. If a taxpayer makes an investment in a qualified business and then sells the investment to a second taxpayer, the credit attributable to the investment must be allowed to the first taxpayer provided the investment is held by the qualified business for three years, and no credit may be allowed to the second taxpayer.

**History:** Effective June 1, 2002.  
**General Authority:** NDCC 57-38-56  
**Law Implemented:** NDCC 57-38.6

## CHAPTER 81-03-02.2

### 81-03-02.2-01. Nonresident filing status and reporting of income.

1. A nonresident individual who moves into this state with the intent to establish permanent residence acquires status as a resident immediately upon entering this state. That individual may file an individual income tax return for the first tax year either as a resident or as a nonresident.
2. An individual who elects to file an individual income tax return as a resident the first tax year in this state must report to this state total income from all sources for the entire year and must pay taxes on that income. That individual is entitled to a tax credit for taxes paid to another state on any portion of that income.
3. An individual who elects to file an individual income tax return as a nonresident the first tax year in this state; must report to this state total income from all sources for that portion of the tax year during which the individual resided in this state. Income from tangible property located in this state must be reported to this state for the entire year.
4. If a resident individual moves out of this state during a tax year with the intent to change residency, that individual must file an individual income tax return as a nonresident and must report to this state total income from all sources for that portion of the tax year during which the individual resided in this state. Income from tangible property located in this state must be reported to this state for the entire year.
5. This rule is effective for taxable years beginning before January 1, 2001.

**History:** Effective July 1, 1985; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-04

**81-03-02.2-01.1. Part-year resident filing status and reporting of income.**

1. An individual who moves into this state during the tax year with the intent to establish permanent residence acquires status as a resident immediately upon entering this state. That individual must file an individual income tax return for the first tax year as a part-year resident.
2. An individual who moves out of this state during the tax year with the intent to change residency must file an individual income tax return for that year as a part-year resident.
3. An individual, who files an individual income tax return as a part-year resident, must report to this state total income from all sources for that portion of the tax year during which the individual resided in this state. Income from sources in this state must also be reported to this state for the portion of the year the individual was not a resident. The individual is entitled to a tax credit for taxes paid to another state on any portion of the income reported to this state.
4. This rule is effective for taxable years beginning after December 31, 2000.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-04

**81-03-02.2-03. Computation of North Dakota income tax liability by a nonresident individual, estate, or trust electing to file under North Dakota Century Code section 57-38-30.3.**

1. Subsection 10 of North Dakota Century Code section 57-38-30.3 provides for the recomputation of the federal income tax liability by nonresident individuals, estates, or trusts to prevent any income from becoming exempt from taxation because of the provisions of North Dakota Century Code section 57-38-30.3 if that income would otherwise have been subject to taxation under the provisions of North Dakota Century Code chapter 57-38. Therefore, a nonresident individual, estate, or trust that files under North Dakota Century Code section 57-38-30.3 and that has out-of-state losses that exceed out-of-state income must make a separate computation to determine a recomputed federal income tax liability.

This computation consists of adding out-of-state losses that exceed out-of-state income to federal adjusted gross income and then using this figure to determine a recomputed federal income tax liability. A schedule prescribed by the tax commissioner must be used to determine the recomputed federal income tax liability. The recomputed income tax

liability is the amount that must be used to compute the North Dakota income tax liability.

2. This rule is effective for taxable years beginning before January 1, 2001.

**History:** Effective July 1, 1985; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-30.3



## CHAPTER 81-03-04

### 81-03-04-02. Payments of estimated taxes by individuals, estates, and trusts.

1. Except as otherwise provided, an individual, estate, or trust subject to section 6654 of the Internal Revenue Code, relating to failure to pay estimated income taxes, shall make payments of estimated state income tax.
2. For purposes of subsection 5 of North Dakota Century Code section 57-38-62:
  - a. An amended return filed on or before the due date, including extensions for filing the original return, is the individual's, estate's, or trust's return for that taxable year.
  - b. An audit assessment does not affect the calculation of estimated tax payments.
3. Interest for failure to make payments of estimated state income tax must be waived by the tax commissioner in the following situations:
  - a. When an individual derives over two-thirds of gross income from farming, files a federal income tax return by March first of the following tax year, and pays the federal tax in full by that same date, but does not make payments of estimated state income tax. The individual does not have to file a state income tax return or pay any state income tax due on or before March first of the following tax year to qualify for this waiver of interest.
  - b. When an individual derives over two-thirds of gross income from farming, makes the one required estimated federal tax installment on January fifteenth of the following tax year, files a federal income tax return after March first of the following tax year, and pays the estimated state income tax due on January fifteenth of the following tax year. The first three payments due on April fifteenth, June fifteenth, and September fifteenth of the current tax year are not required to qualify for this waiver of interest.
  - c. When an individual, estate, or trust utilizes the annualized income installment method for federal purposes as provided in section 6654 of the Internal Revenue Code, and makes the required estimated state income tax payment based thereon.
  - d. When an individual, estate, or trust has a current year tax liability which exceeds the taxpayer's withholding by less than ~~two~~ five

hundred dollars, and the taxpayer does not make payments of estimated state income tax. The ~~two~~ five hundred dollar limitation applies per return.

4. To determine tax liability for the immediately preceding year, married taxpayers who filed separate returns in the prior year, but who plan to file a joint return for the current year, shall combine the tax liabilities reflected on their prior year returns. Joint estimated tax payments for the current year must equal or exceed one hundred percent of the couple's total tax liability for the prior year if the prior year test is applicable.

**History:** Effective November 1, 1987; amended effective July 1, 1989; March 1, 1990; November 1, 1991; April 1, 1996; June 1, 2002.

**General Authority:** NDCC 57-38-56

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

## CHAPTER 81-03-05.1

### 81-03-05.1-05. Subchapter S corporation tax credits.

1. The following tax credits may not be claimed by a subchapter S corporation required to pay state income tax pursuant to subsection 1 of North Dakota Century Code section 57-38-01.4:
  - a. Credit for contributions to nonprofit private colleges.
  - b. Credit for contributions to nonprofit private high schools.
  - c. Geothermal, solar, or wind energy device credit.
  - d. Venture capital corporation credit.
  - e. Myron G. Nelson Fund, Incorporated credit.
  - f. Credit for employment of the developmentally disabled or chronically mentally ill.
  - g. Credit for purchase of memberships, payment of dues, or contributions to certified nonprofit development corporations.
2. These tax credits may only be claimed by an individual shareholder on individual income tax form ND-2 or form 37 individual income tax return (long form), or a fiduciary shareholder on fiduciary income tax return form 38 fiduciary income tax return (long method).
3. The tax credit claimed by each shareholder must be computed by using the shareholder's distributive share ratio. The computed credit is subject to the limitations imposed by North Dakota Century Code chapters 10-30.1, 10-30.2, and 57-38.
4. The following tax credits may be claimed only by a subchapter S corporation required to pay state income tax pursuant to subsection 1 of North Dakota Century Code section 57-38-01.4:
  - a. Corporate tax credit for new industry.
  - b. Corporate tax credit for research and experimental expenditures.

5. ~~Tax credits claimed by the subchapter S corporation may not be claimed by the shareholders. The shareholders may not claim tax credits claimed by the subchapter S corporation.~~

**History:** Effective March 1, 1988; amended effective March 1, 1990; June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 10-30.1-05, 10-30.2-11, 10-30.2-12, 57-38-01.4, 57-38-01.7, 57-38-01.8, 57-38-01.16, 57-38-01.17

## CHAPTER 81-03-05.5

**81-03-05.5-01. Credit for North Dakota alternative minimum tax.** Repealed effective June 1, 2002. The following provisions are applicable for purposes of interpreting subsection 2 of North Dakota Century Code section 57-38-30:

1. For purposes of this section, ~~alternative minimum tax means North Dakota alternative minimum tax.~~
2. ~~To be eligible for a credit on its state income tax return for the years 1991, 1992, 1993, or 1994, a corporation must have paid state alternative minimum tax on its 1989 or 1990 tax return.~~
3. ~~The amount available for credit is equal to the state alternative minimum tax paid for the years 1989 and 1990, less any credit previously taken by the corporation. However, the amount of credit taken in any year may not exceed the corporation's income tax liability for that year.~~

**History:** ~~Effective November 1, 1991.~~

**General Authority:** ~~NDCC 57-38-56~~

**Law Implemented:** ~~NDCC 57-38-01.3, 57-38-30~~

**CHAPTER 81-03-07  
BUSINESS AND CORPORATION PRIVILEGE TAX**

[Repealed effective June 1, 2002]

## CHAPTER 81-03-10

**81-03-10-01. Designation of overpayment amount.** An individual income taxpayer with an available overpayment of tax of at least five dollars may designate a portion of the overpayment, as a voluntary contribution, a minimum of one dollar to either or both of the following:

1. The nongame wildlife fund.
2. The ~~centennial tree~~ trees for North Dakota program trust fund.

**History:** Effective July 1, 1989; amended effective November 1, 1991; June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-34.3, 57-38-35.1

**81-03-10-02. Available overpayment.** The procedure by which the taxpayer's return is originally processed by the tax department may result in adjustments to the available overpayment amount computed by the taxpayer for errors on the return; reduction for taxes, including interest and penalty, owed for prior years; or reduction for amounts owed as child support pursuant to North Dakota Century Code chapter 57-38.3.

When the overpayment amount computed by the taxpayer is reduced by the tax department, taxpayer designations will be reduced in the following order, each designated item to be reduced to zero before proceeding to reduce the next item:

1. The amount of the overpayment that the taxpayer has designated as voluntary contributions to the nongame wildlife fund and the ~~centennial tree~~ trees for North Dakota program trust fund. If the tax department does not reduce the overpayment computed by the taxpayer by the total amount of the voluntary contributions, any remaining overpayment will be allocated between the funds in the same ratio as the designations bear to one another on the taxpayer's return.
2. The amount of the overpayment that the taxpayer has designated as a refund.
3. The amount of the overpayment that the taxpayer has designated as an estimated tax payment for a succeeding year.

**History:** Effective July 1, 1989; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-34.3, 57-38-35.1(3), 57-38-38(1), 57-38-62, 57-38.3

**81-03-10-03. Designation for taxpayers owing tax.** Taxpayers who have a tax balance due, including penalty and interest, of at least five dollars on their income tax return may designate that an additional amount of at least one dollar be paid to the nongame wildlife fund or to the ~~centennial tree~~ trees for North Dakota program trust fund by paying the entire balance that is due for both tax and the designations at the same time that the return is filed. Any designations to the nongame wildlife fund or to the ~~centennial tree~~ trees for North Dakota program trust fund are not obligations enforceable by the tax department. If the amount that is paid with the return does not equal the total of the tax balance due and the amounts designated, the amount of the tax balance due must be paid first and the optional designations must be reduced to the amount paid with the return which is in excess of the tax balance due. The amount paid which is in excess of the tax balance due must be allocated between the funds in the same ratio as the taxpayer designations bear to one another on the taxpayer's return.

**History:** Effective July 1, 1989; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-34.3, 57-38-35.1

**81-03-10-04. Taxpayers with no overpayment or balance due.** A taxpayer with no overpayment of tax of at least five dollars or tax balance due of at least five dollars, may not use the state income tax return to make voluntary contributions. Taxpayers may make contributions directly to the North Dakota game and fish department for the nongame wildlife fund, or to the ~~centennial-decades tree committee~~ North Dakota state forester for the centennial tree trees for North Dakota program trust fund.

**History:** Effective July 1, 1989; amended effective June 1, 2002.

**General Authority:** NDCC 57-38-56

**Law Implemented:** NDCC 57-38-34.3, 57-38-35.1



## CHAPTER 81-04.1-01

**81-04.1-01-16. Casual or occasional sales.** Casual or occasional sales made by an individual are not subject to sales tax. Sales made in the course of a regularly conducted business are subject to sales tax. The following are retailers who must collect and remit sales tax:

1. The auctioneer who auctions the belongings of several undisclosed individuals at a public auction.
2. Persons who buy antiques from others and offer them for sale at a public auction or through a private sale.
3. Persons who conduct permanent rummage sales through which they dispose of the property of others.

A retailer may not claim a casual sale if the property sold is similar to property sold by the retailer in the regular course of business.

A person selling one's own products occasionally is making casual sales, and such sales are not taxable. Sales of such number, volume, or frequency as to indicate that the sale is not a casual or isolated one are subject to tax.

The sale of ~~a business or the~~ capital assets, such as equipment, machinery, and furnishings which are not sold as inventory, shall be deemed outside the regular course of a business is and deemed to be a casual sale and no sales tax is due. If the business being sold is a retail business and the business will ~~continue as a retail business~~ be sold in its entirety by the owner, the inventory is considered to be sold for resale while the sale of the other business assets is considered to be a casual sale. Sale of a retail inventory through auction is subject to section 81-04.1-04-11.

**History:** Effective June 1, 1984; amended effective August 1, 1994; June 1, 2002.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-39.2-04, 57-39.2-20, 57-40.3

**81-04.1-01-22. Services.** Personal and professional services are not subject to sales tax, but materials and supplies used solely in rendering services are subject to sales tax when purchased. Materials and supplies which may be used either in rendering service or sold at retail may be purchased for resale, and sales tax must be collected when these items are sold at retail. The portion of these materials and supplies sold separately to the customer is subject to sales tax and must be included in the sales and use tax report as gross sales. The portion of these materials and supplies used and consumed in rendering service is taxable. The purchase cost must be included as use tax on the sales and use tax return of the person rendering the service.

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

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

Persons engaged in the business of repairing, altering, restoring, or cleaning of tangible personal property belonging to others ~~render a service, which is not subject to sales tax. If the repairer also sells tangible personal property at retail which is similar to the property used and consumed in rendering the services, the repairer must hold a retail sales tax permit. An additional itemized charge to the customer for supplies and materials used and consumed by the repairer is not subject to tax because the tax is to be paid by the repairer when purchasing the goods~~ must collect sales tax on the itemized charge for tangible personal property used in the repair. Separately stated charges for repair labor are not subject to sales tax. If the charge for tangible personal property used in the repair is not itemized, the repairer must pay sales or use tax on the cost of the repair parts.

**History:** Effective June 1, 1984; amended effective March 1, 1990; June 1, 2002.

**General Authority:** NDCC 57-39.2-19, 57-40.2-13

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-14, 57-40.2-01, 57-40.2-02.1, 57-40.2-05, 57-40.2-06, 57-40.2-13

**81-04.1-01-23. Manufacturers Manufacturing machinery and equipment.**

~~Manufacturing or agricultural processing is a process which produces a new article with a different form, use, and name. An agricultural commodity processing facility is a manufacturing plant that processes agricultural commodities into new products. A facility that only stores, cleans, dries, or transports agricultural commodities is not an agricultural commodity processing facility. The modification of articles of tangible personal property is not manufacturing or processing. For example, the creation of steel ducts or I-beams is manufacturing whereas the modification of steel ducts or I-beams to meet the specifications of a particular real property construction contract is not manufacturing or processing. To be considered manufacturing or processing, the raw materials must be materially altered.~~

By way of illustration and not of limitation, the following are manufacturers ~~or agricultural processors:~~ agricultural commodity production facility, food, beverage, confectionary plants; grain mills; bakeries; textile mills; apparel makers; wood and lumber plants; furniture and fixture makers; paper product makers; printers and publishers (includes newspapers); chemical producers; leather good plants; stone, clay, glass, concrete product makers; cement and asphalt plants; metal ware makers;

auto/aircraft makers; dairy processors (not producers); photo finishers (not photographers); and dental, medical, and ophthalmologic labs.

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

Manufacturing The purchase or rental of machinery and equipment are is exempt from sales and use taxes if the machinery or equipment:

1. Is used directly in the process of manufacturing tangible personal property for wholesale, retail, or lease;
2. Is used in a new manufacturing plant or in a physical or economic expansion of an existing plant; and
3. Is used directly in the manufacturing process more than fifty percent of the time the machinery or equipment is used by the manufacturer.

The manufacturing process begins at the point where the raw materials are first received at the plantsite and includes all direct processes prior to transporting the finished product from the plantsite. In addition, machinery and equipment used by a manufacturer to conduct research, development, and design activities qualify for the sales and use tax exemption. Examples of research, development, and design equipment include computer software and hardware used to draw, design, or plan products and machinery and equipment used to build or test prototype models.

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

Machinery and equipment used directly in the manufacturing process also ~~includes~~ include temperature or humidity control equipment necessary to maintain certain temperature or humidity levels in a limited area of the processing or manufacturing facility where either temperature or humidity must be closely regulated for the proper function or production process to occur.

Equipment or machinery used for pollution control; or general heating or cooling of the facility or used to otherwise control the working environment does not qualify for the tax exemption. Also, items which are consumed or destroyed in the manufacturing process but which do not become a part of the finished product

are not machinery and equipment and are subject to sales and use tax. Machinery and equipment not used directly in the manufacturing process ~~or in agricultural processing~~ include repair parts and equipment used for repairing, cleaning, or maintaining facilities, machinery, or equipment; handtools; backup or standby power supplies; computer hardware and software used to maintain inventory, production, or scheduling records; waste disposal or treatment facilities; and safety and security equipment such as fire sprinkler systems and burglar alarms. Purchase of these items by a manufacturer is taxable, and suppliers shall charge sales or use tax on these items. If the items are purchased from an out-of-state supplier or if a North Dakota supplier fails to charge the tax, the North Dakota manufacturer shall report the sales or use tax directly to the North Dakota tax commissioner.

Requests by the manufacturer to purchase or lease machinery and equipment without paying tax or for refunds of tax paid on machinery or equipment which qualify for exemption must be made in writing to the tax commissioner. Only the manufacturer may apply for a refund of the sales or use tax paid on exempt machinery or equipment. A request for refund must include documentation showing the amount of tax paid by the manufacturer or the contractor. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to purchase qualifying machinery and equipment without paying tax or prior to approving a refund. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.

The tax commissioner shall respond in writing to each exemption request stating whether or not the machinery or equipment qualifies for the exemption. The manufacturer may provide the approval letter to its equipment and machinery suppliers to avoid paying sales or use taxes on approved equipment. If a manufacturer purchases equipment before requesting a sales tax exemption, it shall pay all applicable sales and use taxes at the time of purchase but may apply to the tax commissioner for a refund of the taxes paid.

~~Tangible personal property consumed during the construction of an agricultural commodity processing facility or incorporated into the structure of an agricultural processing facility is exempt from sales and use tax. However, the A contractor consuming or installing the materials, machinery, or equipment shall pay the applicable sales or use taxes and the manufacturer shall apply in writing for a refund of the taxes paid by the contractor on machinery or equipment qualifying for a sales and use tax exemption.~~

To receive a refund of taxes paid by a contractor, the ~~agricultural commodity processor~~ manufacturer must provide documentation showing that the contractor paid North Dakota sales or use taxes on the ~~tangible personal property consumed during construction, or on the tangible personal property qualifying machinery and equipment~~ installed into the ~~processing~~ manufacturing facility. The tax commissioner may request an onsite inspection of the ~~processing~~ manufacturing facility before approving the refund of taxes paid by a contractor. The ~~agricultural commodity processor~~ manufacturing facility may request that the refund amount be taken as

a credit adjustment on its next sales and use tax return; however, the tax exemption must be approved in writing by the tax commissioner before the tax credit may be applied on a sales and use tax return. A letter from the tax commissioner stating the amount of the approved credit must be attached to the sales and use tax return on which the credit was applied.

**History:** Effective June 1, 1984; amended effective March 1, 1990; November 1, 1991; August 1, 1994; April 1, 1995; June 1, 2002.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-04.3, 57-39.2-25, 57-40.2-02.1, 57-40.2-04, 57-40.2-13

**81-04.1-01-23.2. Agricultural commodity processing facility.** An agricultural commodity processing facility is a manufacturing facility that processes agricultural commodities into marketable products. A facility, such as a grain elevator, that only stores, cleans, dries, or transports agricultural commodities, is not an agricultural commodity processing facility.

Tangible personal property consumed during the construction of an agricultural commodity processing facility or incorporated into the structure of an agricultural processing facility is exempt from sales and use tax. However, the contractor consuming or installing the materials shall pay the applicable sales or use taxes and the owner of the agricultural processing facility shall apply in writing for a refund of the taxes paid by the contractor.

The purchase or rental of machinery and equipment used directly in the processing of agricultural commodities into marketable products is regarded as manufacturing machinery and equipment, as provided in section 81-04.1-01-23. Machinery and equipment not used directly in the processing of agricultural commodities are subject to sales and use tax. Machinery and equipment not used directly in the processing of agricultural commodities include repair parts and equipment used for repairing, cleaning, or maintaining facilities, machinery, or equipment; handtools; backup or standby power suppliers; computer hardware and software to maintain inventory, production, or scheduling records; waste disposal or treatment facilities; and safety and security equipment, such as fire sprinkler systems and burglar alarms. Items consumed or destroyed in the process and which do not become a part of the finished products do not represent qualifying machinery and equipment and are subject to sales and use tax.

Requests by the manufacturer to purchase or lease machinery or equipment without paying tax or for refunds of tax paid on machinery or equipment which qualify for exemption must be made in writing to the tax commissioner. Only the owner of the agricultural commodity processing facility may apply for a refund of the sales or use tax paid on exempt machinery or equipment. A request for refund must include documentation showing the amount of tax paid by the owner of the agricultural commodity processing facility or the contractor. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to

purchase qualifying machinery and equipment without paying tax or prior to approving a refund. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.

The tax commissioner shall respond in writing to each exemption request stating whether or not the machinery or equipment qualifies for the exemption. The owner of the agricultural commodity processing facility may provide the approval letter to its equipment and machinery suppliers to avoid paying sales and use taxes on approved equipment. If an owner of the agricultural commodity processing facility purchases equipment before requesting a sales tax exemption, it shall pay all applicable sales and use taxes at the time of purchase but may apply to the tax commissioner for a refund of the taxes paid.

To receive a refund of taxes paid by the contractor, the owner of the agricultural commodity processor must provide documentation showing that the contractor paid North Dakota sales or use taxes on the tangible personal property consumed during construction, or on the tangible personal property qualifying machinery and equipment installed into the manufacturing facility. The tax commissioner may request an onsite inspection of the manufacturing facility before approving the refund of taxes paid by the contractor.

The owner of the agricultural commodity processing facility may request that the refund amount be taken as a credit adjustment on its next sales or use tax return; however, the tax exemption must be approved in writing by the tax commissioner before the tax credit may be applied on a sales and use tax return. A letter from the tax commissioner stating the amount of the approved credit must be attached to the sales and use tax return on which the credit is applied.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-04.3, 57-39.2-04.4, 57-39.2-25, 57-40.2-04, 57-40.2-13

**81-04.1-01-23.3. Computer and telecommunications equipment.**

1. Purchases of computer and telecommunications equipment intended for a new primary sector business or a physical or economic expansion of a primary sector business are exempt from sales tax. As used in this section:
  - a. "Computer equipment" means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Examples of devices fastened by a signal cable or other communication medium include terminals, card or tape punchers, printers, optical readers, display units or monitors, document sorters, and card readers.

- b. "Primary sector business" means a business that has been certified by the North Dakota department of commerce division of economic development and finance as a primary sector business.
  - c. "Telecommunications equipment" means tangible personal property used to provide a communication service, as defined by section 81-04.1-04-41.1.
2. Purchase of replacement communications and telecommunications equipment is subject to sales or use tax.
  3. A contractor installing qualifying computer and telecommunications equipment shall pay the application sales or use tax and the primary sector business shall apply in writing for refund of the taxes paid by the contractor on computers and telecommunications equipment qualifying for a sales or use tax exemption.
  4. Requests for a primary sector business to purchase or lease computer or telecommunications equipment without paying tax or for refunds of tax paid on machinery or equipment which qualify for exemption must be made in writing to the tax commissioner. Only the primary sector business may apply for a refund of the sales or use tax paid on exempt computer or telecommunications equipment. A request for refund must include documentation showing the amount of tax paid by the primary sector business or contractor. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to purchase qualifying computer and telecommunications equipment without paying tax and prior to approving a refund. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.
  5. The tax commissioner shall respond in writing to each exemption request, stating whether or not the computer or telecommunications equipment qualifies for an exemption. The primary sector business may provide the approval letter to its computer and telecommunications equipment suppliers to avoid paying sales or use taxes on approved equipment. If a primary sector business purchases equipment before requesting a sales tax exemption, it shall pay all applicable sales and use taxes at the time of purchase but may apply to the tax commissioner for a refund of the taxes paid.
  6. The primary sector business may request that the refund amount be taken as a credit adjustment on its next sales and use tax return; however, the tax exemption must be approved in writing by the tax commissioner before the credit may be applied on a sales and use tax return. A letter from the tax commissioner stating the amount of the

approved credit must be attached to the sales and use tax return on which the credit is applied.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-04.3, 57-39.2-25, 57-40.2-04, 57-40.2-13

**81-04.1-01-27.1. Recordkeeping a sales and use tax transaction.**  
Repealed effective June 1, 2002.

1. ~~**In-general:** Every retailer doing business in this state or storing, using, or consuming in this state tangible personal property purchased from a retailer and every lessor and lessee of tangible personal property for use in this state shall keep complete and adequate records necessary for the commissioner to determine the amount of North Dakota sales and use tax due. Unless the commissioner authorizes an alternative method of recordkeeping in writing, these records must show:~~
  - a. ~~Gross receipts from sales, or rental payments from leases, of tangible personal property, including any services that are a part of the sale or lease made in this state.~~
  - b. ~~All deductions allowed by law and claimed in filing a return.~~
  - c. ~~Total purchase price of all tangible personal property purchased for sale, consumption, or lease in this state.~~

~~These records must include the normal books of account ordinarily maintained by a prudent businessman engaged in business, and together with all bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of accounts and all schedules or working papers used in preparation of tax returns.~~

2. ~~**Microfilm or microfiche records:** Records may be microfilmed or microfiched, as long as the records are authentic, accessible, and readable, and the following requirements are fully satisfied:~~
  - a. ~~Appropriate facilities are provided for preservation of the films or fiche for the periods open to examination.~~
  - b. ~~A detailed index of all microfilmed and microfiched data is maintained and arranged to permit the immediate location of a particular record.~~



- c. ~~A reader-printer in good working order at the examination site for reading, locating, and reproducing any record maintained on microfilm or microfiche.~~
  - d. ~~Written procedures governing the establishment of a microfilm or microfiche system, and the individuals responsible for maintaining and operating the system with appropriate authorization from the board of directors, general partners, or owner.~~
  - e. ~~The microfilm or microfiche system is complete and used consistently in the regular conduct of the business.~~
  - f. ~~Established procedures with appropriate documentation to follow the original document through the microfilm or microfiche system.~~
  - g. ~~Established internal procedures for microfilm or microfiche inspection and quality assurance.~~
  - h. ~~Effective identification, processing, storage, and preservation of microfilm or microfiche, making it readily available for inspection by the commissioner.~~
  - i. ~~A record of where, when, by whom, and on what equipment the microfilm or microfiche is produced.~~
  - j. ~~When displayed on a microfilm or microfiche reader (viewer) or reproduced on paper, the material exhibits a high degree of legibility and readability. Legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.~~
  - k. ~~All production of microfilm or microfiche and processing, duplication, quality control, storage, identification, and inspection must meet industry standards as set forth by the American national standards institute, national micrographics association, or national bureau of standards.~~
3. **Records prepared by automated data process (ADP) systems:** An automated data process systems tax accounting system may be used to provide the records required for the verification of tax liability. Although automated data process systems vary from one taxpayer to another, all automated data process systems must include a method of producing legible and readable records necessary to verify tax liability. The following requirements apply to a taxpayer maintaining records on an automated data process system:

- a. ~~Recorded or reconstructible data. Automated data process systems records must be able to trace any transaction back to the original source or forward to a final total. If a detail printout is not made of a transaction at the time it is processed, the system must have the ability to reconstruct the transaction.~~
  - b. ~~General and subsidiary books of account. A general written ledger, with source references to coincide with financial reports for tax reporting periods. Where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers must be written out.~~
  - c. ~~Supporting documents and audit trail. The audit trail must be designed so the details underlying the summary accounting data may be identified and made available to the commissioner upon request. The system must be designed to make supporting documents, such as sales invoices, purchase invoices, credit memoranda, and like documents readily available.~~
  - d. ~~Programming documentation. A description of the automated data process systems portion of the accounting system must be made available. The statements and illustrations as to the scope of operations must indicate:
    - (1) ~~The application being performed.~~
    - (2) ~~The procedures employed in each application which may be supported by flow charts, block diagrams, or other description of the input or output procedures.~~
    - (3) ~~The controls used to ensure accurate and reliable processing. Effective rates of important changes must be noted.~~~~
  - e. ~~Data storage media. Adequate record retention facilities must be available for storing tax information, printouts, and all supporting documents required by law.~~
4. **Records retention:** All records pertaining to transactions involving sales or use tax liability must be preserved for a period of not less than three years and three months.
5. **Examination of records:** All records must be made available for examination on request by the commissioner or the commissioner's authorized representatives.

**6. ~~Failure to maintain and disclose complete and adequate records:~~**  
~~Upon failure of the taxpayer, without reasonable cause, to substantially  
comply with the requirements of this section, the commissioner shall:~~

~~a. Impose the full penalty provided by law.~~

~~b. Enter any order necessary to obtain compliance with this regulation.~~

**History:** ~~Effective March 1, 1988.~~

**General Authority:** ~~NDCC 57-39.2-19, 57-40.2-13~~

**Law Implemented:** ~~NDCC 57-39.2-01, 57-39.2-10, 57-39.2-11, 57-39.2-21,  
57-40.2-01, 57-40.2-09, 57-40.2-13~~

## CHAPTER 81-04.1-04

**81-04.1-04-02. Agriculture - Farm machinery and equipment - Farm machinery repair parts.** Farm machinery and irrigation equipment used principally for producing agricultural crops or livestock, including leasing or renting of farm machinery and equipment, are subject to sales tax at a reduced rate.

Machinery sold for nonagricultural purposes is subject to sales tax at the full rate. Motor vehicles required to be registered with the motor vehicle department, including vehicles such as trucks, pickups, cars, snowmobiles, all-terrain vehicles, and garden tractors, do not qualify as farm machinery. Irrigation equipment sold for nonagricultural purposes is subject to sales tax at the full rate. Tires, accessories, communication equipment, tools, shop equipment, grain bins, feed bunks, fencing material, and other farm supplies are subject to sales tax at the full rate.

Contractors installing barn cleaners, milking systems, automatic feeding systems, irrigation systems, and similar installations which become a part of real property are subject to use tax on the cost of the materials.

The reduced rate applies to parts, excluding tires, used to repair qualifying farm machinery. The reduced rate on farm machinery repair parts applies only when the machinery is used exclusively for agricultural purposes. These same parts are subject to the general North Dakota sales and use tax rate when sold to contractors or others who do not use the machinery exclusively for agricultural purposes.

Farm repair parts include any durable goods, except tires, used to repair qualifying farm machinery. Durable goods do not include fluids, gases, oils, greases, lubricants, paints, and waxes. Farm machinery repair parts do not include items like tools, lumber, twine, fencing material, or storage tanks.

Sales of parts not clearly identified for use in farm machinery are subject to the reduced rate when used by the seller to repair farm machinery.

When parts are sold over the counter, the seller should use discretion but should generally accept in good faith the purchaser's word as to their intended use. When the purchaser intends to use the parts on a qualifying farm machine, the reduced rate applies. If the parts are for nonfarm machinery use, the general sales tax rate must be charged.

Effective July 1, 2002, the sale of used farm machinery, farm machinery repair parts, and used irrigation equipment that previously qualified for the reduced rate will become exempt from sales tax.

**History:** Effective June 1, 1984; amended effective July 1, 1985; July 1, 1987; March 1, 1988; June 1, 2002.

**General Authority:** NDCC 57-39.2-19, 57-40.2-13

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-08.2, 57-40.2, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-05, 57-40.2-12

**81-04.1-04-07.1. Educational, religious, or charitable sales activities.**

Gross receipts from educational, religious, or charitable activities are subject to tax when these activities include regular retail sales made in direct competition with other retailers.

"Regular retail sales" includes all recurring, regularly scheduled, or ongoing retail sales made in the ordinary course of business other than those made on an isolated or occasional basis.

"Direct competition" means activity wholly or substantially similar to existing sales, taxable goods, or services competing for the same customer market.

A community music organization or a community theater organization may present live performances of musical or theatrical works in a publicly owned facility without charging sales tax on the admissions provided that the organization is exempt from federal income tax and provided that the net proceeds from all such activities are expended for religious, educational, or charitable purposes.

The gross receipts from all other sales or admissions made in a publicly owned facility by an organization exempt from federal income tax are subject to sales tax unless the gross receipts from the organization's educational, religious, or charitable activities are five thousand dollars or less.

**History:** Effective November 1, 1987; amended effective August 1, 1994; June 1, 2002.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

**81-04.1-04-29. Minerals - Coal.** Coal mined and sold in this state subject to the coal severance tax is exempt from sales tax. Coal mined outside this state is not subject to sales tax when sold in this state.

Coal ~~used primarily, mined and sold~~ for heating buildings in this state, including the heating of buildings with steam created by the burning of coal, is subject to sales tax.

**History:** Effective June 1, 1984; amended effective June 1, 2002.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-61

#### **81-04.1-04-41.1. Communication service.**

1. The gross receipts from the sale of all communication services provided in the state are subject to sales tax provided the communication service originates and terminates within the state's borders, regardless of where the billing for the service is made.
2. "Communication service" is the transmission of any interactive electromagnetic communication, including voice, image, data, and any other information, by means of wire, cable, fiber optic, microwave, radio wave, any combination of such media, or any other method now in existence or that may be devised.
3. Taxable communication services include the following:
  - ~~1-~~ a. Basic telephone service;
  - ~~2-~~ b. Toll telephone service;
  - ~~3-~~ c. Teletypewriter or computer exchange service;
  - ~~4-~~ d. Cellular mobile communication service;
  - ~~5-~~ e. Mobile radio service; and
  - ~~6-~~ f. Two-way paging service.
4. Auxiliary or enhanced services are taxable and include charges for connection or reconnection of communication services, charges connected with the transmission of any message or image, charges for storage of data connected with communication services, call waiting, and call forwarding. Access charges billed to retail consumers are also taxable.
5. ~~Cellular telephone~~ Mobile telecommunications services. A cellular radio communication company's receipts for intrastate mobile telephone communications services mobile telecommunications company that provides communication services, as defined in North Dakota Century Code chapter 57-34.1, to retail consumers are taxable. The taxability

~~of roaming charges associated with this service is determined by the location of the first cell site. Gross receipts from interstate mobile communication services are not taxable. If the service provider's records do not identify a point of origination and termination of a communication, the communication is presumed to originate and terminate within the state and is taxable shall use the location of the customer's place of primary use for the purpose of determining whether tax is due on services charged to the customer. "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and within the licensed service area of the home service provider.~~

6. Taxable communication services do not include:
1. a. One-way communication service;
  2. b. Purchase of communication service from one communication provider to another, for resale to a retail consumer, provided a certificate of resale is provided to the seller by the purchaser;
  3. c. Charges for interstate communication service;
  4. d. Communication services to exempt entities;
  5. e. Communication services to Indian retail consumers enrolled and living on an Indian reservation within this state; and
  6. f. 911 emergency telephone charges.
7. Charges for nontaxable services must be separately stated from charges for taxable services.

**History:** Effective April 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC 57-39.2-19

**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-19, 57-39.2-20

## CHAPTER 81-05.1-01

### 81-05.1-01-02. Motor vehicle excise tax imposed.

1. All motor vehicles, except motor vehicles leased for a period of one year or more and having an actual vehicle weight of ten thousand pounds [4535.92 kilograms] or less, purchased or acquired in or outside this state intended for use upon the streets and highways of this state are subject to an excise tax ~~at the rate of four percent~~ on the purchase price, less any trade-in allowance, of the motor vehicle.
2. Motor vehicles leased for a period of one year or more and having an actual vehicle weight of ten thousand pounds [4535.92 kilograms] or less are subject to an excise tax on the total consideration of the lease at the time the lease is initiated.
3. A credit will be allowed for sales, use, or motor vehicle excise tax paid in another state on all motor vehicles purchased or acquired outside this state if the state in which the motor vehicle was purchased or acquired allows a similar credit.

If the state in which the motor vehicle was purchased does not impose a sales tax or a motor vehicle excise tax, the North Dakota motor vehicle excise tax must be paid on the full purchase price of the vehicle before license and registration will be issued in this state. If the motor vehicle has been previously licensed and registered in a state which imposes no sales tax or motor vehicle excise tax, the North Dakota motor vehicle excise tax will apply at the fair market value of the vehicle upon registration in this state.

If a motor vehicle has been licensed and registered in a foreign country prior to its licensing and registration in this state, no credit is allowed for sales tax or motor vehicle excise tax previously paid to such foreign country.

- ~~3.~~ 4. The motor vehicle excise tax is in addition to any other tax provided for by law on the purchase price of motor vehicles.
4. 5. The motor vehicle excise tax must be paid to the North Dakota department of transportation's motor vehicle registrar division when application is made for registration plates or for a certificate of title for a motor vehicle.



Registration plates and certificates of title will not be issued unless the tax is paid.

**History:** Effective June 1, 1984; amended effective June 1, 2002.

**General Authority:** NDCC 57-40.3-12

**Law Implemented:** NDCC 39-04-18, 57-40.3-02, 57-40.3-02.1, 57-40.3-06, 57-40.3-07, 57-40.3-08, 57-40.3-09

**81-05.1-01-03. Exemptions.** The following are exempt from payment of the North Dakota motor vehicle excise tax:

1. ~~Motor~~ Any two motor vehicles owned by or leased and in the possession of a disabled veterans veteran pursuant to conditions set forth in North Dakota Century Code section 57-40.3-04.
2. Any motor vehicle owned by or in possession of the federal or state government, including any state institution, or a political subdivision thereof.
3. Motor carrier vehicles in excess of twenty thousand pounds [9071.85 kilograms] gross weight, whether owned or leased, engaged in interstate commerce but only to the extent their revenue from interstate hauling bears to their total revenue from hauling for the preceding operating year.

For the purpose of properly administering this exemption, the percentage allowed as an exemption to carriers is derived from figures included in either the auto transportation utility annual report or the agricultural carrier annual report. One of those reports must be filed annually by each carrier registered with the North Dakota public service commission. When completing the required report, the carrier must include figures which indicate gross income from freight or passenger transport during the preceding calendar year as well as income from strictly intrastate transport for that year. No exemption is allowed until the required report is filed with the North Dakota public service commission.

When one person owns or leases two or more motor carrier vehicles over twenty thousand pounds [9071.85 kilograms], the receipts from all such vehicles will be used when figuring the percentage of revenue earned from interstate and intrastate transport for motor vehicle excise tax purposes.

When the person responsible for payment of the motor vehicle excise tax has not owned or leased such a motor carrier vehicle during the preceding year, no exemption is allowed at the time of titling it with the ~~registrar of motor vehicles~~ vehicle division, unless that person purchases a business which received revenue from interstate hauling in the

preceding year. The exemption will be allowed only if there are no substantial changes intended which would affect the percentage of interstate hauling done by the business. No exemption will be allowed to persons responsible for the motor vehicle excise tax on the basis of projected miles of interstate transport for a future year or years. A person who purchases or leases such a motor carrier vehicle for use in interstate commerce but who did not own or lease such a vehicle for interstate commerce use during the preceding year will not be allowed an exemption at the time of titling the vehicle with the ~~registrar of motor vehicles~~ vehicle division, but after using it one year in interstate commerce, that person may apply for a refund for that part of the tax attributed to use in interstate commerce as determined in accordance with this section.

Private motor carriers and those agricultural carriers who are not required to file an annual report with the public service commission are eligible for the interstate exemption when titling motor carrier vehicles of at least twenty thousand pounds [9071.85 kilograms] gross weight. However, owners must submit a signed affidavit to the ~~registrar of motor vehicles~~ vehicle division indicating the percentage of gross revenue they received during the preceding calendar year from interstate transport of passengers or freight in such vehicles. These carriers' records will be subject to audit by the North Dakota tax department to substantiate figures claimed on the affidavit. The percentage of gross revenue refers to the gross revenue from freight or passenger transport.

4. Any motor vehicle transferred without consideration to or from a person within thirty days prior to that person's entering into, within thirty days after discharge from, or while serving in the armed services of the United States, provided the person certifies to the ~~registrar of motor vehicles~~ vehicle division that the transfer is made for one of those reasons.

Members of the armed forces on active military duty within this state are liable for payment of motor vehicle excise tax when titling a vehicle in this state.

Any motor vehicle purchased by a North Dakota resident who is a member of the armed forces and is stationed out of state may title that vehicle in this state but is exempt from payment of excise tax provided the vehicle is not intended for use in this state.

5. Motor vehicles acquired by inheritance from or by bequest of a decedent who owned it; the transfer of motor vehicles which were previously titled or licensed in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more of the joint tenants; the transfer of motor vehicles by way of gift between a husband and wife, parent and child, or brothers and sisters.

This exemption includes title changes for motor vehicles as a result of name changes due to adoption, court order, marriage, or divorce.

6. Motor vehicles transferred between a lessee and a lessor, provided that the lessee has been in continuous possession of such vehicle for a period of one year or longer, and provided that the lessor has paid either the tax imposed by ~~North Dakota Century Code chapter 57-40.3~~ based on the purchase price of the vehicle at the time of titling or licensing the vehicle in this state or the use tax imposed by North Dakota Century Code chapter 57-40.2. This exemption does not include motor vehicles transferred between a lessee and a lessor, on or after July 1, 2001, for a period of one year or more and having an actual vehicle weight of ten thousand pounds [4535.92 kilograms] or less.
7. Any motor vehicle in the possession of and used as a bus exclusively by a nonprofit senior citizens' or handicapped persons' corporation, provided that such bus is not used for commercial activities.
8. Any motor vehicle which does not exceed ten thousand pounds [4535.92 kilograms] gross weight and which is acquired by a permanently physically disabled licensed driver who is restricted to operating only motor vehicles equipped with special controls to compensate for the disability, or by a permanently physically disabled individual who has either surrendered or who has been denied a an operator's license because of a permanent physical disability, provided the individual obtains from the state highway commissioner or an authorized representative a statement that either the individual has such a restricted operator's license, or has surrendered the license, or one has not been issued because of a permanent physical disability.
9. Any motor vehicle being registered pursuant to North Dakota Century Code chapter 39-04 for the first time by a person who manufactured or assembled the motor vehicle for that person's own use, except when such vehicle is manufactured by a manufacturer of motor vehicles as defined in subsection 32 of North Dakota Century Code section 39-01-01.
10. Motor vehicles purchased or ~~otherwise acquired by~~ leased and in the possession of a parochial or a private nonprofit school to be used for the transportation of students. This exemption includes motor vehicles used for driver education instruction. The vehicles may not be used in a commercial activity, and the school must normally maintain a regular faculty and a curriculum approved by the department of public instruction and must have a regularly organized body of students.
11. Housetrailers or mobile homes subject to the sales and use tax. Travel trailers are not exempt.

12. Motor vehicles transferred within one hundred eighty days from the effective date as the result of the following partnership transactions:
  - a. Motor vehicles licensed in the name of an individual who is a member of a general or limited partnership transferred to the partnership at the time the partnership is established.
  - b. Motor vehicles licensed in the name of a general or limited partnership transferred to an individual who is a member of such partnership at the time the partnership is terminated.
13. Motor vehicles transferred within one hundred eighty days from the effective date as the result of the following corporate transactions:
  - a. Motor vehicles licensed in the name of an individual who is a stockholder in a corporation transferred to the corporation at the time the corporation is organized.
  - b. Motor vehicles licensed in the name of a corporation transferred to a stockholder of that corporation at the time the corporation is liquidated.
14. Motor vehicles transferred ~~due to~~ within one hundred eighty days from the effective date of the business reorganization. The original owner of the motor vehicle must be a member of the reorganized business and the exemption applies only under the following circumstances:
  - a. A sole proprietor changes the name or the nature of the proprietor's business and requests a new title to reflect this change.
  - b. A sole proprietor becomes a partner in a partnership and a new title is requested to reflect the change in ownership of the vehicle.
  - c. A sole proprietor or partnership reorganized into a corporation and a motor vehicle is transferred from the sole proprietor or a partnership to the corporation.
  - d. A motor vehicle is transferred between a subsidiary and a parent corporation as the result of a merger, exchange of, or redistribution of assets during the course of reorganization.
  - e. A merger takes place between any of the following: a sole proprietorship, partnership, or corporation.

f. A joint venture is undertaken.

**History:** Effective June 1, 1984; amended effective June 1, 2002.

**General Authority:** NDCC 57-40.3-12

**Law Implemented:** NDCC 57-40.3-02, 57-40.3-02.1, 57-40.3-04

**81-05.1-01-04. Leasing and rental companies.** Leasing companies are responsible for payment of the motor vehicle excise tax to the registrar of motor vehicles vehicle division when titling vehicles for leasing purposes. ~~The subsequent sale of such a vehicle to a lessee who has been in continuous possession of the vehicle for a period of one year or more is tax exempt. If a leased vehicle is sold to a lessee who has been in possession of the vehicle for a period of less than a year, the tax must be remitted to the registrar of motor vehicles by the purchaser. The application of tax is as follows:~~

1. All motor vehicles leased for a period of one year or more and having an actual vehicle weight of ten thousand pounds [4535.92 kilograms] or less are subject to motor vehicle excise tax, at the time the owner of the vehicle titles the motor vehicle for use in this state, based on the total consideration of the lease at the time the lease is initiated. The motor vehicle excise tax will apply when additional charges are made after the inception of the lease, and may include excess mileage charges, excess wear charges, damage or repair charges, lease cancellation charges, option to renew charges, and end-of-the-lease payments. The subsequent purchase or buyout of a qualifying lease vehicle by the lessee will result in the payment of motor vehicle excise tax by the lessee on the purchase or buyout amount when titled or licensing the motor vehicle in this state.

Tax will apply to an end-of-the-lease payment if it is determined the lessee owes an additional charge based on the difference between the market value and the estimated residual value of the vehicle. No refund of tax is provided to the owner or lessee when the market value is greater than the estimated residual value.

2. All other motor vehicles placed into lease service will be subject to motor vehicle excise tax based on the purchase price of the vehicle at the time of titling or licensing the vehicle in this state. The subsequent purchase or buyout of the leased vehicle by the lessee will result in the payment of motor vehicle excise tax by the lessee on the purchase or buyout amount when titling or licensing the motor vehicle in this state unless the vehicle has been in continuous possession of the lessee for a period of one year or more.

Rental companies are responsible for payment of the motor vehicle excise tax to the motor vehicle division when titling vehicles for rental purposes.

When a dealer occasionally rents a vehicle on a daily basis and has not paid motor vehicle excise tax on the vehicle, such as one held for resale, the dealer is required to collect and remit sales tax at the current rate based on the daily rental charges.

**History:** Effective June 1, 1984; amended effective June 1, 2002.

**General Authority:** NDCC 57-40.3-12

**Law Implemented:** NDCC 57-40.3-02, 57-40.3-02.1, 57-40.3-04

**81-05.1-01-05. Purchases by Indians.** Purchases of motor vehicles by Indians are subject to the motor vehicle excise tax for titling purposes, unless the purchase occurs on an Indian reservation by an enrolled member of the tribe or by the tribe.

The owner of a motor vehicle intended for lease or rental to an enrolled member of the tribe is subject to the motor vehicle excise tax, unless the owner is an enrolled member of the tribe and the transaction occurs on the Indian reservation.

Motor vehicles owned and operated by Indian mission schools are exempt from payment of motor vehicle excise tax.

**History:** Effective June 1, 1984; amended effective July 1, 1998; June 1, 2002.

**General Authority:** NDCC 57-40.3-12

**Law Implemented:** NDCC 39-04-18, 57-40.3-02, 57-40.3-02.1, 57-40.3-04, 57-40.3-08

**81-05.1-01-09. Refunds.** If it appears that any motor vehicle excise tax was paid in error or remitted when not due, the tax will be refunded upon application. The application must be made within three years from the date of payment of the tax.

Such application should be made to the ~~registrar of motor vehicles~~ vehicle division who will, upon presentation of satisfactory proof, authorize the refund to be made. No refund will be authorized by the ~~registrar of motor vehicles~~ vehicle division until the ~~registrar~~ motor vehicle division is fully satisfied through the production of necessary purchase agreements, tax receipts, other documents, and information that the refund is warranted.

A refund of the motor vehicle excise tax paid on the total consideration of a qualifying lease that is due and payable by the owner is not allowed unless the owner has agreed to cancel the lease and refund all moneys received or if the motor vehicle is returned under North Dakota Century Code chapter 57-40.4.

**History:** Effective June 1, 1984; amended effective June 1, 2002.

**General Authority:** NDCC 57-40.4-01

**Law Implemented:** NDCC 57-40.4-01, 57-40.4-02

**ARTICLE 81-06.1**

**MOTOR FUEL TAX**

Chapter

- 81-06.1-01 Definitions [Repealed]
- 81-06.1-02 Motor Fuel Tax Imposed
- 81-06.1-03 Refunds and Assignments [Repealed]
- 81-06.1-04 Licenses, Bonding, and Permits [Repealed]

**CHAPTER 81-06.1-01  
DEFINITIONS**

[Repealed effective June 1, 2002]

## CHAPTER 81-06.1-02

**81-06.1-02-01. Motor vehicle fuel tax imposed. Repealed effective June 1, 2002.** Motor vehicle fuel sold or used in this state is taxed at the rate imposed under North Dakota Century Code section 57-43.1-02.

1. Banks, trust companies, building and loan associations, credit unions, and public and private educational facilities are subject to the motor vehicle fuel tax. Federal credit unions organized under the Federal Credit Union Act are exempt.
2. Motor vehicle fuel used to operate auxiliary equipment which is fueled from the same supply tank as the vehicle itself is subject to motor vehicle fuel tax. The tax may be refunded pursuant to section 81-06.1-03-01.
3. The licensed motor vehicle fuel dealer is responsible for the tax. A monthly dealer's report is required and the tax must be remitted upon filing the report.
4. Motor vehicle fuel used for an industrial purpose is subject to the motor vehicle fuel tax. The motor vehicle fuel user may be eligible for a refund pursuant to section 81-06.1-03-01.

**History:** Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; March 1, 1990.

**General Authority:** NDCC 57-43.1-30

**Law Implemented:** NDCC 57-43.1-02, 57-43.1-16, 57-43.1-23, 57-43.1-33

**81-06.1-02-02. Importer for use tax imposed. Repealed effective June 1, 2002.** Importer for use tax on all motor vehicle fuel and special fuels used in the propulsion of motor vehicles upon the public highways in this state is imposed at the rate provided for motor vehicle fuels in North Dakota Century Code section 57-43.1-02 and special fuels in North Dakota Century Code section 57-43.2-02.

1. The formula used to compute the average miles per gallon [kilometers per liter] of fuel used in interstate fleet operations is total miles [kilometers] traveled in all states and Canadian provinces, divided by total gallons [liters] of fuel used in all states and Canadian provinces. Liters and kilometers must be converted to gallons and miles for purposes of the formula. The average miles per gallon [kilometers per liter] determined by this formula must be used to determine total gallons [liters] of fuel used in North Dakota.



2. ~~The user may request a refund or a credit for North Dakota fuel tax paid when more fuel is purchased in North Dakota than necessary to cover miles [kilometers] traveled in this state.~~

**History:** ~~Effective June 1, 1984; amended effective November 1, 1987; March 1, 1990.~~

**General Authority:** ~~NDCC 57-43.1-30, 57-43.2-22~~

**Law Implemented:** ~~NDCC 57-43.1-02, 57-43.1-33, 57-43.1-34, 57-43.1-42, 57-43.2-02, 57-43.2-26, 57-43.2-27, 57-43.2-35~~

**81-06.1-02-03. Special fuels tax imposed under North Dakota Century Code section 57-43.2-02 - Exemptions.** ~~Repealed effective June 1, 2002. A person who holds a valid special fuels or liquefied petroleum dealer's license issued by the tax commissioner is subject to the per gallon [3.78 liters] tax imposed under North Dakota Century Code section 57-43.2-02 on special fuels sold or used in the state in the following situations:~~

1. ~~Special fuels sold for resale to a nonlicensed dealer.~~
2. ~~Special fuels sold to a contractor and subcontractor.~~
3. ~~Special fuels sold to a fuel user for use in a licensed vehicle.~~
4. ~~Special fuels sold for use in a vehicle owned or used by a bank, trust company, building and loan association, credit union, public and private educational facility, school busing service, medical facility, ambulance service, and a law enforcement agency are not exempt. Also, special fuels sold for use in a race car or in any type of recreational vehicle are not exempt.~~
5. ~~Special fuels sold directly to an agency of the federal government, including a federal credit union organized under the Federal Credit Union Act are exempt.~~
6. ~~Special fuels sold to a fuel user who intends to use all or part of the fuels for a purpose that does not qualify for an exemption. This includes fuels sold to a custom combiner, an implement dealer, an agricultural fuel user who intends to use part of the fuel in a licensed vehicle, an industrial fuel user who intends to use part of the fuel in auxiliary equipment, and to any other fuel user who intends to use the fuels for both an exempt and a nonexempt purpose.~~

7. ~~Special fuels sold to the state, county, city, township, park district, or other political subdivision.~~

**History:** ~~Effective June 1, 1984; amended effective November 1, 1987; March 1, 1990; August 1, 1994.~~

**General Authority:** ~~NDCC 57-43.2-22~~

**Law Implemented:** ~~NDCC 57-43.2-02, 57-43.2-03, 57-43.2-04~~

**81-06.1-02-03.1. Special fuels tax imposed under North Dakota Century Code section 57-43.2-03 - Exemptions.** ~~Repealed effective June 1, 2002. A person who holds a valid special fuels or liquefied petroleum dealer's license issued by the tax commissioner is subject to the two percent excise tax imposed under North Dakota Century Code section 57-43.2-03 on special fuels sold or used in the state in the following situations:~~

1. ~~Special fuels used for heating purposes.~~
2. ~~Special fuels sold for use in a railroad locomotive or in a nonlicensed offroad vehicle used for railroad repair and maintenance.~~
3. ~~Special fuels sold to a person in the business of agriculture for use in nonlicensed equipment.~~
4. ~~Special fuels sold for a privately funded industrial purpose, excluding special fuels sold to a contractor or subcontractor.~~

~~The tax is computed based upon two percent of the sale price. If the sale price is discounted by the special fuels or liquefied petroleum dealer, the tax applies on the discounted price. The sale price on which the tax is computed must include freight or related charges if those charges are paid by the special fuels user.~~

~~Before determining whether the tax imposed by North Dakota Century Code section 57-43.2-03 applies, the licensed special fuels or liquefied petroleum dealer must make a good faith effort to assure that the special fuels user intends to use the fuel exclusively for one of the exempt purposes. If after the fuel is sold, it is determined that a special fuels user used all or part of the fuel for a purpose that does not qualify for the two percent excise tax, the tax commissioner may assess the fuels user for additional tax, penalty, and interest.~~

**History:** ~~Effective August 1, 1994.~~

**General Authority:** ~~NDCC 57-43.2-22~~

**Law Implemented:** ~~NDCC 57-43.2-03, 57-43.2-04, 57-43.2-15, 57-43.2-24~~

**81-06.1-02-04. Aviation fuel tax imposed.** Repealed effective June 1, 2002.  
Aviation fuel is taxed at the rate of eight cents per gallon [3.79 liters]. The aviation fuel dealer is responsible for collecting and remitting the tax.

**History:** Effective June 1, 1984.  
**General Authority:** NDCC 57-43.3-05  
**Law Implemented:** NDCC 57-43.3-02

**81-06.1-02-05. Tax deductions allowed to dealers.**

1. A motor vehicle fuel dealer is allowed to deduct two percent of the amount of the tax due to cover the cost of collecting the tax and remitting it to the tax commissioner.
2. A motor vehicle fuel dealer and a special fuels dealer, other than a dealer of liquefied petroleum gas, is allowed to deduct the actual shrinkage of the total gallonage of the motor fuel received each calendar month, if that allowance does not exceed one percent of the total received by the dealer during that month.
  - a. The motor vehicle fuel dealer must file reports on gross purchases unless a temperature adjusted method is agreed to between the dealer and the supplier. A reporting method must be used for a full reporting year, and any change in the reporting method must have prior approval by the tax commissioner.
  - b. It is presumed that all motor vehicle fuel and special fuels received by a dealer over and above the one percent shrinkage allowance has been sold, delivered, or used, and the dealer is liable for the appropriate tax on each gallon [3.79 liters] of fuel not accounted for.
  - c. For purposes of administering North Dakota Century Code section 57-43.1-27, the following procedures apply:
    - (1) 1. On a sale made to a retail outlet or other entity not licensed by the tax commissioner, a dealer must credit the outlet or other entity with a one percent shrinkage and tax collection allowance. The allowance must be documented on the face of the delivery invoice, and the dealer shall deduct the allowance from taxable gallons on the dealer's tax return.
    - (2) 2. On a transfer of product to a dealer's retail storage facility or pump, a credit may be allowed for a one percent shrinkage and tax collection allowance, provided:
      - (a) a. The transfer is treated as a sale documented by a sales invoice.

- (b) b. The per gallon tax is reported and paid on the monthly report for the month in which the product is transferred.
  - (c) c. The product transferred is deducted from the dealer's inventory as sold or used. The allowance must be documented on the face of the delivery invoice, and the dealer shall deduct the allowance from taxable gallons on the dealer's tax return.
- (3) 3. On a sale of fuel made by a dealer to a fuel user, including a person who uses fuel for agricultural purposes, the one percent shrinkage and tax collection allowance credit may not be taken on the dealer's tax return.
- d. ~~The special fuels dealer of liquefied petroleum gas may deduct the actual shrinkage of the total gallonage received each month not to exceed two percent of the gallonage received during that month.~~

**History:** Effective June 1, 1984; amended effective November 1, 1991; June 1, 2002.

**General Authority:** NDCC 57-43.1-30, 57-43.2-22

**Law Implemented:** NDCC 57-43.1-24, 57-43.1-26, 57-43.1-27, 57-43.2-21

**CHAPTER 81-06.1-03  
REFUNDS AND ASSIGNMENTS**

[Repealed effective June 1, 2002]

**CHAPTER 81-06.1-04  
LICENSES, BONDING, AND PERMITS**

[Repealed effective June 1, 2002]

## CHAPTER 81-08-02

**81-08-02-02. Nature of coal severance tax.** Repealed effective June 1, 2002. As provided in North Dakota Century Code section 57-61-01 the coal severance tax is a tax "imposed upon all coal severed for sale or for industrial purposes by coal mines within the state" of North Dakota. The tax is imposed at a rate of seventy-five cents per ton of two thousand pounds [907.18 kilograms] on coal severed in this state beginning July 1, 1987. The coal severance tax rate must be the same for all coal severed except as otherwise provided. An additional tax at a rate of two cents per ton of two thousand pounds [907.18 kilograms] is imposed beginning July 1, 1987, effective through June 30, 1989.

**History:** Amended effective September 1, 1979; November 1, 1987.

**General Authority:** NDCC 57-61-08

**Law Implemented:** NDCC 57-61-01

**81-08-02-05. Coal severance tax in lieu of sales or use taxes on coal.** Repealed effective June 1, 2002. Coal on which the North Dakota coal severance tax is imposed is not subject to retail sales or use taxes imposed by North Dakota Century Code chapters 57-39.2 and 57-40.2.

Coal mined outside of North Dakota either before or after July 1, 1975, and before July 1, 1997, and coal mined in North Dakota before July 1, 1975, shall be subject to the retail sales and use tax laws, North Dakota Century Code chapters 57-39.2 and 57-40.2, if sold at retail in this state or purchased at retail for storage, use, or consumption in this state. Coal mined outside of North Dakota after July 1, 1997, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states, shall be subject to sales and use taxes of six cents per million British thermal units, North Dakota Century Code chapters 57-39.2 and 57-40.2, if sold at retail in this state or purchased at retail for storage, use, or consumption in this state.

**History:** Amended effective July 1, 1998.

**General Authority:** NDCC 57-61-08

**Law Implemented:** NDCC 57-61-01

## CHAPTER 81-08-03

**81-08-03-07. Byproducts revenue exempt from taxation.** Effective ~~January 1, 1997, through December 31, 2000, for any given month, the allowed exemption of revenue derived from the sale of byproducts other than the sale of carbon dioxide for use in enhanced recovery of oil or natural gas may not exceed thirty-five percent of the sum of total gross receipts from the sale of synthetic natural gas during the month plus total gross receipts from the sale of byproducts during the month.~~ Effective after December 31, 2000, for any given month, the allowed exemption of revenue derived from the sale of byproducts other than the sale of carbon dioxide for use in enhanced recovery of oil or natural gas may not exceed twenty percent of the sum of total gross receipts from the sale of synthetic natural gas during the month plus total gross receipts from the sale of byproducts during the month. Gross receipts from the sale of carbon dioxide for use in enhanced recovery of oil or natural gas are not subject to tax but are included in total gross receipts for the purpose of the percentage calculation.

**History:** Effective November 1, 1987; amended effective July 1, 1989; November 1, 1991; July 1, 1998; June 1, 2002.

**General Authority:** NDCC 57-60-12

**Law Implemented:** NDCC 57-60-01, 57-60-02, 57-60-03



## CHAPTER 81-09-02

### 81-09-02-03. Procedure for refund of overpayments, duplicate payments, and erroneous payments of tax:

1. For purposes of this section, "taxpayer" means the party who has actually remitted an overpayment, duplicate payment, or erroneous payment of tax.
2. A claim for credit or refund must be made by filing with the commissioner an amended return with the commissioner. ~~A claim for refund must also contain a statement outlining the specific grounds upon which the claim for refund is based, the total amount of the refund claimed, a list of the leases and production periods involved, and any documentation supporting the claim for refund.~~
3. A claim for credit or refund must be made within the applicable time period specified in North Dakota Century Code section 57-51-19. For the purpose of determining whether there has been a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, the change in tax liability must be determined on a well or unit basis, as reported on the return. If no tax has been paid on production from a well or unit for any production month, the requirement of a change in the liability in excess of twenty-five percent is automatically met.
4. ~~Within thirty days of the claim for refund or credit, the commissioner shall acknowledge receipt of the claim and request additional information if needed.~~ The commissioner shall notify the taxpayer as to the amount of refund or credit granted within a reasonable time of the claim. If the commissioner decides to deny the taxpayer's claim for refund or credit, in part or in full, a notice of refund change must be sent by certified mail with a return receipt requested, and it must state the reasons for the decision.
5. The notice of refund change becomes final and irrevocable unless the taxpayer files a protest and statement of grounds with the commissioner pursuant to section 81-01.1-01-06. If a taxpayer protests only a portion of the commissioner's decision, the portion which is not protested becomes finally and irrevocably fixed. The commissioner shall provide a detailed response to the statement of grounds pursuant to section 81-01.1-01-07.
6. Upon request, the commissioner may grant the taxpayer an informal conference.

7. If a protest and statement of grounds are filed, the commissioner shall reconsider the notice of refund change. This reconsideration may include further examination by the commissioner of the taxpayer's books, papers, records, or memoranda, pursuant to section 81-01.1-01-03 and North Dakota Century Code sections 57-01-02 and 57-01-07.
8. Pursuant to section 81-01.1-01-08, the commissioner shall send a notice of reconsideration to the taxpayer by certified mail with a return receipt requested stating the amount of refund or credit denied.
9. The notice of reconsideration becomes final and irrevocable unless the taxpayer seeks formal administrative review of the notice by filing a complaint and requesting an administrative hearing pursuant to sections 81-01.1-02-01 and 81-01.1-02-02.1. The complaint must be served personally or by certified mail. The provisions of North Dakota Century Code chapter 28-32 apply to and govern the filing of the complaint and the administrative hearing procedure, including an appeal from any decision rendered by the commissioner.

**History:** Effective October 1, 1987; amended effective July 1, 1989; May 1, 1991; June 1, 1992; April 1, 1995; June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-01-02, 57-01-07, 57-51-19

**81-09-02-03.1. Interest on refunds.** The commissioner does not have the authority to pay interest on a claim for credit of tax. ~~For taxable periods before July 1, 1991, the commissioner does not have the authority to pay interest on a claim for refund of tax. For taxable periods beginning on or after July 1, 1991, interest~~ Interest of ten percent per annum must be paid on tax refunds. The daily interest rate is .000277.

~~The accrual period for interest on refunds is as follows:~~

- ~~1. For taxable periods beginning on or after July 1, 1991, interest accrues from the date the tax is paid through the date the refund is mailed to the taxpayer.~~
- ~~2. For taxable periods beginning on or after July 1, 1993, interest~~ Interest accrues from sixty days after the due date of the return or after the return was filed or after the tax was fully paid, whichever comes later, through the date the refund is mailed to the taxpayer.

**History:** Effective July 1, 1989; amended effective June 1, 1992; August 1, 1994; June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-19

**81-09-02-03.2. Procedure for limited review of amended returns submitted with claim for credit or refund.**

1. Upon receipt of an amended return submitted with a claim for credit or refund, the commissioner shall perform a limited review to determine that tax was paid with a previously filed return and that the amended return is completed properly.
2. Mathematical or clerical errors as defined in section 81-01.1-01-02 may be corrected by the commissioner after notification is provided to the taxpayer.
3. When the tax commissioner grants a tax credit ~~is granted by the commissioner~~, the taxpayer will be notified by ~~telephone, with~~ written confirmation; of the amount of the tax credit which may be used to reduce ~~the current month's~~ a future tax liability. ~~Under no circumstances may the taxpayer apply a tax credit on an original return without the express permission of the commissioner.~~
4. When the tax commissioner grants a tax refund ~~is granted by the commissioner~~, a refund check will be issued to the taxpayer.
5. Nothing in this rule is intended to preclude the commissioner's authority to audit the information reported on the amended return or to assess tax due.

**History:** Effective June 1, 1992; amended effective April 1, 1995; June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-19

**81-09-02-04. Due dates for filing a return and paying tax.** If the due date for filing a return and paying the tax owed falls on a Saturday, Sunday, or legal holiday, the return and payment are due on the next business day. If a taxpayer is required to file an amended return, this return is due on the date set by the commissioner. A return or payment is delinquent if it is postmarked or transmitted after the due date.

**History:** Effective July 1, 1989; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-05, 57-51-06, 57-51-10

**81-09-02-08. Determination of gross value.** Repealed effective June 1, 2002. ~~To determine whether oil has been reported at its fair market value, the commissioner will compare the reported value of the oil with the price prevailing for comparable oil in the field in which the oil was produced. If purchases of oil in a field are limited to or dominated by a single purchaser, the commissioner may test the reasonableness of the reported value by comparing it with the price of~~

~~comparable oil in other fields in the state. The commissioner may also use any other method which is reasonable to determine whether the reported value is indicative of fair market value, including, but not limited to, comparing the reported value with the oil's value upon disposition at downstream points.~~

~~To determine whether gas has been reported at its fair market value, the commissioner may use a workback method, a comparable sales method, or any other method which would reasonably ascertain fair market value at the time of production. In applying the workback method, reasonable expenses incurred in gathering and processing the gas, excluding however any expenses relating to exempt gas products that are returned to the lease, will be deducted from the market value of the gas products derived from the wet gas and the resulting value will be compared to the reported gas value. In applying the comparable sales method, the reported gas value will be compared to the sales value of comparable gas in the field in which the gas was produced. If purchases of gas in a field are limited to or dominated by a single purchaser, the commissioner may test the reasonableness of the reported value by comparing it with the price of comparable gas in other fields in the state.~~

~~If the commissioner determines pursuant to any reasonable method that the reported value of oil or gas is not equivalent to fair market value, an assessment will be levied for additional tax on the basis of the fair market value of the oil or gas.~~

~~This rule is only effective for taxable periods prior to July 1, 1991.~~

**History:** ~~Effective March 1, 1990; amended effective June 1, 1992.~~

**General Authority:** ~~NDCC 57-51-21, 57-51.1-05~~

**Law Implemented:** ~~NDCC 57-51-02~~

**81-09-02-10. Condensate recovered from a gas stream.**

1. For the purposes of this section, the following definitions apply:
  - a. "Condensate" means all liquid hydrocarbons recovered from a gas stream in a gathering system after the custody transfer meter but before processing at a gas plant. Condensate is otherwise referred to as "pigging liquids", "gathering system condensate", or "drip".
  - b. "Gross value" of condensate at the point of recovery means the price paid under an arm's length contract for the sale of oil as defined in North Dakota Century Code section 57-51-02.3.
  - c. "Processing" means any process designed to remove elements or compounds, hydrocarbons and nonhydrocarbons, from gas, including absorption, adsorption, or refrigeration. Field processes that normally take place on or near the lease, such as natural

pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing.

2. Gross value at the well includes the value of condensate from associated and nonassociated production. There may be deducted from the gross value of condensate certain costs incurred to recover the condensate from a gas stream after the custody transfer meter. Effective January 1, 1995, the costs of recovery must be calculated and deducted from the gross value of condensate under either of the following methods:
  - a. By multiplying fifteen percent times the gross value of the condensate, as using a gross value that is finally determined by the commissioner. This method establishes conclusively the costs of recovery of the condensate from a gas stream; or
  - b. By using reasonable actual costs incurred to recover the condensate from a gas stream after the custody transfer meter. Actual costs do not include proceeds retained under a gas sales or gas processing agreement between a producer and a purchaser or processor. If the method under this subdivision is elected, the costs of recovery must be fully substantiated upon request and are subject to audit by the commissioner.

The value of condensate is included in gross value regardless of the point at which it is recovered. This includes condensate recovered at the lease site, gas gathering lines, compressor station, and inlet separator of a processing plant.

The commissioner shall review the cost of recovery methods under subdivisions a and b of subsection 2 after the cost of recovery provision has been in effect for two years.

**History:** Effective August 1, 1986; amended effective April 1, 1995; June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-02

#### **81-09-02-14. Taxation of volume gains.**

1. An oil purchaser that has realized a volume gain resulting from differing measurements of the oil; must report and pay tax on the volume gain. An oil purchaser that has incurred a volume loss resulting from differing measurements of the oil; may utilize the volume loss on a first-in first-out basis to offset a volume gain in subsequent periods as follows:
  - a. ~~For a volume loss carried forward after December 31, 1996, an oil purchaser may utilize the loss to offset a gain at any trunkline measurement point. A volume loss carried forward after~~

~~December 31, 1996, must be utilized on a first in-first out basis before January 1, 2000.~~

- b. ~~For a volume loss which is incurred after December 31, 1996, an~~  
An oil purchaser may utilize the loss to offset a gain at another trunkline measuring point. A volume loss ~~which is incurred after December 31, 1996,~~ may be carried forward for three years after the due date of the return for the production month in which the loss was incurred.
2. The amount of volume gain and volume loss must be calculated for each month and reported. The amount of volume gain must be reported on the oil return in the month succeeding production.
  3. A volume gain or volume loss is calculated by subtracting the total amount of oil received by the purchaser as measured at the well from the total amount of oil delivered by the purchaser as measured at the trunkline. If this calculation results in a positive number, there is a volume gain. If this calculation results in a negative number, there is a volume loss. A volume gain or loss may be adjusted for a volume gain or loss attributable to production outside North Dakota.
  4. A volume gain cannot be decreased and a volume loss cannot be increased by oil lost due to spillage, leakage, fire, theft, or any other event resulting in a physical loss of oil.

**History:** Effective June 1, 1992; amended effective September 1, 1997; June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-02, 57-51-05, 57-51-06

**81-09-02-17. Definition of gas base rate adjustment and tax rate.**  
Repealed effective June 1, 2002. ~~The gas base rate adjustment and the tax rate on taxable gas production reported in MGF for fiscal years beginning July 1, 1992, and subsequent years, are as follows:~~

<del>FISCAL YEAR</del>	<del>BASE RATE ADJUSTMENT</del>	<del>TAX RATE PER MGF</del>
<del>July 1, 1992, through June 30, 1993</del>	<del>1.018494</del>	<del>\$.0407</del>
<del>July 1, 1993, through June 30, 1994</del>	<del>1.002642</del>	<del>\$.0404</del>
<del>July 1, 1994, through June 30, 1995</del>	<del>1.036988</del>	<del>\$.0415</del>
<del>July 1, 1995, through June 30, 1996</del>	<del>0.961691</del>	<del>\$.0385</del>
<del>July 1, 1996, through June 30, 1997</del>	<del>0.861295</del>	<del>\$.0345</del>
<del>July 1, 1997, through June 30, 1998</del>	<del>1.1664</del>	<del>\$.0467</del>

**History:** ~~Effective August 1, 1994; amended effective April 1, 1995; April 1, 1996; July 1, 1998.~~

**General Authority:** ~~NDCC 57-51-21~~

**Law Implemented:** ~~NDCC 57-51-02.2~~

**81-09-02-18. Method for calculating the tax rate on gas.** The gas tax rate for fiscal years beginning July 1, 1992, and subsequent years, will be calculated by the following method:

1. An annual average of the gas fuels producer price index, commodity code 05-3, as published by the United States department of labor, bureau of labor statistics, will be calculated by dividing the sum of the monthly gas fuels producer price index for January through December of the previous calendar year by the denominator of twelve, with the resultant rounded to one place after the decimal.
2. The gas base rate adjustment will be calculated by dividing the annual average of the gas fuels price index by the denominator of 75.7, with the resultant rounded to six places after the decimal.
3. The gas tax rate will be calculated by multiplying \$.04 times the gas base rate adjustment, with the resultant rounded to four places after the decimal.

**History:** ~~Effective August 1, 1994; amended effective June 1, 2002.~~

**General Authority:** ~~NDCC 57-51-21~~

**Law Implemented:** ~~NDCC 57-51-02.2~~

**81-09-02-19. Reporting requirements for producers and purchasers.**

1. The purchaser of oil at the well must file a monthly oil purchaser's report, as follows:
  - a. If the purchase of oil at the well is an arm's length transaction, the first purchaser must file the oil purchaser's report.
  - b. If the first purchase of oil at the well is a non-arm's length transaction and the oil is resold at the well to an arm's length purchaser, the second purchaser must file the oil purchaser's report.
  - c. If the first purchase of oil at the well is a non-arm's length transaction and the oil is not resold at the well but is sold downstream, the purchaser at the well must file the oil purchaser's report.
  - d. The term arm's length transaction as used in this section is defined in section 81-09-02-09.

2. The purchaser is primarily responsible for remitting tax due on all oil purchased from an operator or working interest owner when delivery is made at the well. The commissioner may accept payment of the tax from the operator or working interest owner but failure of the operator or working interest owner to pay the tax will not relieve the purchaser of liability for the tax.
3. The Unless the operator and working interest owner have received a waiver of the filing requirement, they shall report as follows:
  - a. ~~The operator of a property must report one hundred percent of production volume each month.~~ The operator must also report the sales volume and the gross value at the well of the oil the operator actually sold.
  - b. The working interest owners who take oil in kind must report the sales volume and the gross value at the well of the oil taken in kind.
4. ~~The operator of a producing property must file a monthly oil producer's report unless a written exception is granted allowing a working interest owner to assume the reporting responsibilities of an operator who does not have a working interest in production.~~
5. The operator must report and remit the tax on all oil not sold at the well, including any oil used, lost, stolen, or otherwise unaccounted for after it has been produced.
6. ~~5.~~ Beginning January 1, 1995, the The person reporting and remitting tax on a new property will be required to must submit documentation to support a claim for exempt royalty interests. The documentation must be mailed to the commissioner within ninety days after the first report is filed on the property.

**History:** Effective April 1, 1995; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-05, 57-51-06, 57-51-07

**81-09-02-20. Waiver of requirement to file producer's report.**

1. ~~Beginning August 1, 1997, the~~ The commissioner may waive the producer's requirement to file a monthly oil or gas report. To qualify for a waiver the producer must file an application for waiver with the commissioner. The producer must receive written approval from the commissioner before a waiver of the filing requirement will become effective.



2. All tax due on oil sold from a producing property, for which the filing requirement has been waived, must be reported and paid on the purchaser's monthly report. A waiver does not release a producer from any responsibility to remit tax due. A producer's period of obligation will be determined by the filing date of the purchaser's return. A producer must continue to maintain production records for inspection by the commissioner.
3. A producer must continue to report and remit the tax on all oil not sold at the well, including any oil used, lost, stolen, or otherwise unaccounted for after it has been produced even though a waiver has been received.
4. The commissioner may terminate the waiver at any time by providing written notice to the producer. The producer will be required to file a return effective for the production month following the month in which the notice of termination is issued. The producer may terminate the waiver by providing the commissioner with written notice that a return will be filed in the next succeeding month.

**History:** Effective July 1, 1998; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21

**Law Implemented:** NDCC 57-51-06

## CHAPTER 81-09-03

**81-09-03-05. Rate reduction for qualifying secondary and tertiary recovery projects.** ~~Repealed effective June 1, 2002. To be eligible for the four percent tax rate, a unit operator must have the project certified as qualifying by the industrial commission and must submit a copy of the certification received from the industrial commission to the tax commissioner. This rule is only effective for secondary or tertiary recovery projects which were commenced prior to July 1, 1991.~~

**History:** ~~Effective October 1, 1987; amended effective June 1, 1992.~~

**General Authority:** ~~NDCC 57-51-21, 57-51.1-05~~

**Law Implemented:** ~~NDCC 57-51.1-01(5)(6)~~

### **81-09-03-05.1. Tax incentives for qualifying secondary recovery projects.**

- ~~1. **Exemption from oil extraction tax.** The exemption for incremental production from a qualifying secondary recovery project is exempt from the oil extraction tax for a period of five years ~~starting~~ starts with the first day of the first month in which incremental oil is produced from the project. ~~To be eligible for this exemption, a unit operator must have the industrial commission determine the production decline curve for the project and certify that the project is qualified on a technical basis.~~~~
- ~~2. **Reduction in oil extraction tax rate.** The nonincremental production from a qualifying secondary recovery project which is not otherwise exempt is subject to tax at a reduced extraction tax rate of four percent starting with the first day of the first month after the project achieves the production increase required pursuant to subsection 5 of North Dakota Century Code section 57-51.1-01. To be eligible for this rate reduction, a unit operator must have the industrial commission certify that the project has achieved the requisite increase in production and a copy of the industrial commission's certification must be submitted to the tax commissioner. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.~~

**History:** ~~Effective June 1, 1992; amended effective June 1, 2002.~~

**General Authority:** ~~NDCC 57-51-21, 57-51.1-05~~

**Law Implemented:** ~~NDCC 57-51.1-01(5)(6)~~

### **81-09-03-05.2. Tax incentives for qualifying tertiary recovery projects.**

- ~~1. **Exemption from oil extraction tax.** The exemption for incremental production from a qualifying tertiary recovery project is exempt from the oil extraction tax for a period of ten years ~~starting~~ starts with the first day of the first month in which incremental oil is produced from the~~

project. To be eligible for this exemption, a unit operator must have the industrial commission determine the production decline curve for the project and certify that the project is qualified on a technical basis:

2. **Reduction in oil extraction tax rate:** The nonincremental production from a qualifying tertiary recovery project which is not otherwise exempt is subject to tax at a reduced extraction tax rate of four percent starting with the first day of the first month after the project achieves the production increase required pursuant to subsection 6 of North Dakota Century Code section 57-51.1-01. To be eligible for this rate reduction, a unit operator must have the industrial commission certify that the project has achieved the requisite increase in production and a copy of the industrial commission's certification must be submitted to the tax commissioner. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.
3. Elimination of The exemption and rate reduction. If may be eliminated as of the first day of the first month in which the unit ceased to be operated as a qualified project if the industrial commission determines that the unit operator is not continuing to operate the unit as a qualifying tertiary recovery project, the exemption and rate reduction provided for in subsections 1 and 2 hereof will be eliminated as of the first day of the first month in which the unit ceased to be operated as a qualified project.

**History:** Effective June 1, 1992; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-01(5)(6)

#### **81-09-03-06. New well exemption for vertical and horizontal wells.**

1. ~~Oil produced from a A new vertical well during the first fifteen consecutive months starting with the date the well was completed is exempt from the oil extraction tax.~~
2. ~~For a horizontal new well drilled and completed after April 27, 1987, but before April 1, 1995, oil produced from the horizontal new well during the first fifteen consecutive months starting with the date the well was completed is exempt from the oil extraction tax.~~
3. ~~For a horizontal new well drilled and completed after March 31, 1995, oil produced from the and a new horizontal new well during the first twenty-four consecutive months starting exemption starts with the date the well was completed is exempt from the oil extraction tax.~~
4. 2. The fifteen-month and twenty-four month exempt periods run consecutively from the date the well is completed even though all or a

portion of the new well exemption may be rendered ineffective by the oil price trigger discussed below.

- 5- ~~3.~~ ~~Test oil from a new well is also exempt from the oil extraction tax. Only one new well exemption is allowed per well bore. The well bore of a horizontal well consists of both the vertical and horizontal segments.~~
  
- 6- ~~4.~~ ~~To be eligible for the new well exemption, a producer must submit a new well qualification letter signed by a representative of the industrial commission. This qualification letter must state the date the well was spudded, the date the well was completed, and the total volume of test oil recovered prior to completion, and, if applicable, that the well was drilled and completed as a horizontal well after March 31, 1995 the commissioner must receive notification of the well's completion in a report from the industrial commission. The commissioner will verify the date the well was completed and issue an exemption letter to the operator. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed. The tax commissioner will accept the information provided in the qualification letter subject to confirmation upon audit.~~
  
7. ~~If the average price of a barrel of crude oil, as defined in subsection 2 of North Dakota Century Code section 57-51.1-01, is thirty-three dollars or more, for any consecutive five-calendar-month period, the new well exemption is ineffective. If, however, the average price of oil then declines below thirty-three dollars per barrel for any subsequent consecutive five-calendar-month period, the new well exemption is reinstated beginning on the first day of the first month following the five-month period in which the average price of crude oil was below thirty-three dollars per barrel.~~

**History:** Effective October 1, 1987; amended effective March 1, 1990; June 1, 1992; April 1, 1996; June 1, 2002.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-03(3)

**81-09-03-08. Work-over exemption.** ~~Oil produced from a qualifying well that has been worked over is exempt from the oil extraction tax for a consecutive twelve-month period starting with the first day of the third month after completion of the work-over project. The twelve-month period runs consecutively from the first day of the third month after completion of the work-over project, even though all or a portion of the exemption may be rendered ineffective by the oil price trigger discussed below.~~

~~To be eligible for this exemption, a taxpayer shall submit~~ The commissioner must receive a work-over qualification letter signed by a representative of the industrial commission. ~~This qualification letter must state~~ stating that the work-over

project meets the requirements set forth in North Dakota Century Code section 57-51.1-03. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed. The letter must also provide the following information:

1. The name of the lease.
2. The location of the well.
3. The name of the party entitled to the tax exemption.
4. The date the notice of intention was filed.
5. The average daily production of the well during the latest six calendar months of continuous production.
6. The cost of the work-over project.
7. The average daily production of the well during the first sixty days after completion of the work-over project, if the cost of the work-over project is sixty-five thousand dollars or less.
8. The dates on which the work-over project was performed.

The commissioner will accept the information provided in the qualification letter subject to confirmation upon audit.

~~If the average price of a barrel of crude oil, as defined in subsection 2 of North Dakota Century Code section 57-51.1-01, is thirty-three dollars or more, the exemption is eliminated on all wells beginning the first day of the first month following that five-month period.~~

~~If the above trigger provision does occur, and the average price of oil then declines below thirty-three dollars per barrel for any subsequent consecutive five-calendar-month period, the exemption is reinstated for all qualifying wells beginning the first day of the first month following the five months of prices below thirty-three dollars per barrel.~~

**History:** Effective March 1, 1990; amended effective June 1, 1992; August 1, 1994; June 1, 2002.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-03

**81-09-03-09. Trigger provision applicable to reduced oil extraction tax rate.** Oil produced from a new well, or a well that receives a work-over exemption after June 30, 1993, or a qualifying secondary or tertiary recovery project and not otherwise exempt is subject to tax at a reduced extraction tax rate of four percent.

~~However, if the average price of a barrel of crude oil is thirty-three dollars or more, for any consecutive five-calendar-month period, the oil extraction tax rate for the aforementioned production increases to six and one-half percent starting with the first day of the first month following the five-month period where the average price was thirty-three dollars or more. If the oil extraction tax rate is increased from four to six and one-half percent, and after the increase, the average price of oil declines to less than thirty-three dollars per barrel during any subsequent five-calendar-month period, the rate of tax reverts to four percent starting with the first day of the first month following the five-month period where the average price was less than thirty-three dollars. The trigger becomes effective starting with the first day of the first month following the five-month period in which the average price exceeded the trigger price. The oil extraction tax percentage will revert back to the reduced or exempt rate beginning on the first day of the first month following the five-month period in which the average price of crude oil was below the trigger price provided the wells still qualify for the reduced rate or exemption.~~

**History:** Effective June 1, 1992; amended effective August 1, 1994; June 1, 2002.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-03

#### **81-09-03-10. Horizontal reentry well exemption.**

- ~~1. Oil produced from a horizontal reentry well during the first nine consecutive months starting with the date the well was recompleted as a horizontal well is exempt from the oil extraction tax.~~

The designation of a horizontal reentry well is given to a well initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well ~~after March 31, 1995.~~ This designation may also apply to the reentry and recompletion of a vertical well that is classified by the industrial commission as a dry hole.

- The nine-month exempt period runs consecutively from the date the horizontal reentry well is recompleted even though all or a portion of the exemption may be rendered ineffective by the oil price trigger described in this section.
- Test oil from a horizontal reentry well is exempt from the oil extraction tax. The well bore of a horizontal reentry well consists of both the vertical and horizontal segments.
- After the nine-month exempt period expires, oil produced from a horizontal reentry well is subject to the same oil extraction tax rate that was applicable before the exempt period.
- ~~To be eligible for the horizontal reentry well exemption, a producer must submit The commissioner must receive a qualification letter signed by~~

a representative of the industrial commission. ~~This qualification letter must state~~ stating the dates the well was initially spudded and completed as a vertical well, the dates the well was reentered and recompleted as a horizontal well, the total volume of test oil recovered prior to recompletion, and, if applicable, the date the well was initially plugged and abandoned as a dry hole. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.

- ~~6. If the average price of a barrel of crude oil, as defined in North Dakota Century Code section 57-51.1-01, is thirty-three dollars or more, for any consecutive five-calendar-month period, the horizontal reentry well exemption is ineffective. If, however, the average price of oil then declines below thirty-three dollars per barrel for any subsequent consecutive five-calendar-month period, the horizontal reentry exemption is reinstated beginning on the first day of the first month following the five-month period in which the average price of crude oil was below thirty-three dollars per barrel.~~

**History:** Effective April 1, 1996; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-03(7)

#### **81-09-03-11. Two-year inactive well exemption.**

- ~~1. Oil produced from a A two-year inactive well is exempt from the oil extraction tax for a period of ten years starting exemption starts with the first day of the month in which the industrial commission's certification of well status is received by the tax commissioner.~~
2. A two-year inactive well is a well that has not produced oil in more than one month in the twenty-four-month period immediately preceding the date an application for well status is received by the industrial commission. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.
3. The inactive well exemption is applicable to all oil produced during the exemption period after the well is certified as a two-year inactive well.
4. The ten-year exempt period runs consecutively from the month the tax commissioner receives the industrial commission's certification even though all or a portion of the inactive well exemption may be rendered ineffective by the oil price trigger described in this section.
5. To be eligible for the inactive well exemption, ~~a producer~~ the commissioner must ~~submit~~ receive a copy of the industrial commission's

certification stating the date the application for well status was received by the industrial commission and stating that the well qualifies as a two-year inactive well. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.

6. ~~If the average price of a barrel of crude oil, as defined in North Dakota Century Code section 57-51.1-01, is thirty-three dollars or more, for any consecutive five-calendar-month period, the inactive well exemption is ineffective. If, however, the average price of oil then declines below thirty-three dollars per barrel for any subsequent consecutive five-calendar-month period, the inactive well exemption is reinstated beginning on the first day of the first month following the five-month period in which the average price of crude oil was below thirty-three dollars per barrel.~~

**History:** Effective April 1, 1996; amended effective June 1, 2002.

**General Authority:** NDCC 57-51-21, 57-51.1-05

**Law Implemented:** NDCC 57-51.1-03(6)



**ARTICLE 81-12**

**ALCOHOL AND BEER TAXES**

Chapter

81-12-01

General Considerations - Alcohol and Beer Taxes

**CHAPTER 81-12-01**

**GENERAL CONSIDERATIONS - ALCOHOL AND BEER TAXES**

Section

81-12-01-01

Forms

81-12-01-02

Source of Supply

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81-12-01-06

Beer Tax Credit

81-12-01-07

Liquor Tax Information Required

81-12-01-08

Cash for Beer

81-12-01-09

Commercial Credit for Liquor

**81-12-01-01. Forms.** The tax commissioner shall prescribe the necessary forms and procedures to ensure proper and efficient collection of beer and liquor taxes.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-03-04, 5-03-05

**81-12-01-02. Source of supply.** No wholesaler shall purchase any alcoholic beverage for resale from any source other than any of the following:

1. The manufacturer, rectifier, distiller, brewer, or winery producing the alcoholic beverage.
2. The owner of the trademark under which the alcoholic beverage is packaged for sale to retailers.
3. The United States importer or United States agent for a foreign manufacturer or trademark owner of the alcoholic beverage.
4. The expressly designated agent for North Dakota, or the primary American source of supply, of any of the above.

5. The wholesaler of alcoholic beverages.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-03-05

**81-12-01-03. Liquor manifesting.**

1. All persons sending or bringing liquor into North Dakota shall file a North Dakota schedule A report of all shipments and returns for each calendar month with the tax commissioner. The report must be postmarked on or before the fifteenth day of the following month.
2. Shipments between liquor wholesalers within North Dakota will be accomplished by the transferring wholesaler furnishing the tax commissioner a detailed invoice in duplicate.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-02-01, 5-03-01, 5-03-04, 5-03-05, 5-03-06

**81-12-01-04. Beer suppliers reporting requirements.** Beer shall not be sent or brought into North Dakota except to licensed wholesalers. All persons sending beer into North Dakota shall send the tax commissioner a copy of the invoice at the time of shipment and file a monthly North Dakota schedule C report with the tax commissioner. The report shall be postmarked on or before the fifteenth day of the following month.

All beer destined for delivery to a federal enclave in North Dakota for domestic consumption and not transported through a licensed North Dakota wholesaler for delivery to such bona fide federal enclave in North Dakota shall have clearly identified on each individual item that such shall be for consumption within the federal enclave exclusively. Such identification must be in a form and manner prescribed and approved by the tax commissioner.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-02-01, 5-03-01, 5-03-04, 5-03-05, 5-03-06

**81-12-01-05. Beer wholesalers reporting requirements.** The monthly North Dakota wholesalers report of beer purchased filed by beer wholesalers shall be accompanied by a check for the full amount of the tax due. The return must be postmarked on or before the fifteenth of each month.

Beer purchased from the brewery, or as allowed under section 81-12-01-02, in the preceding calendar month means all beer ordered by the wholesaler which

appears on the monthly shipment report submitted by the brewery, or those sources allowed under section 81-12-01-02, to the tax commissioner.

Beer in bulk containers means containers not less than one-fourth barrel.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-03-04, 5-03-05

**81-12-01-06. Beer tax credit.** Beer wholesalers may be given credit of up to three dollars on taxes paid on beer which cannot be sold in North Dakota upon receipt of a statement from the licensee explaining the reason such beer is not salable. Tax credits for larger amounts shall be allowed, upon satisfactory proof, after immediate notification to the tax commissioner of an event that prohibits sale of such beer in North Dakota, unless time is not important in proving the facts required by the tax commissioner. Claims for tax credits on beer sold out of state shall be accompanied by a copy of the return filed in that state. Invoices for sales to military reservations shall be sent to the tax commissioner with the monthly report.

Tax credits shall be allowed on bad accounts charged off for income tax purposes only after receipt of a copy of the tax return showing such and receipt of invoices showing the type and quantity of beverages purchased for which payment was not received.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-03-04, 5-03-05

**81-12-01-07. Liquor tax information required.** Liquor wholesalers shall file a North Dakota monthly liquor report with the tax commissioner. The return shall be accompanied by the full amount of tax due on liquor sold the preceding month. Liquor wholesalers shall retain copies of all invoices of liquor sold and make these invoices available for inspection upon request by the tax commissioner in a manner prescribed by chapter 81-01.1-04. The invoices shall show the name and address of the purchaser, the date of sale, the kind of merchandise, the number of cases, and the number and size of containers per case. The date of sale shall be the date of delivery.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-03-04, 5-03-05

**81-12-01-08. Cash for beer.** No wholesaler may sell beer to any retailer except for cash. Cash shall include a check dated on or before the day of delivery. Any wholesaler receiving a check from a retailer which is returned by the bank due to insufficient funds shall immediately notify the retailer. If the check is not made good within forty-eight hours, the wholesaler shall notify the wholesaler's competitors

and the tax commissioner. No sales shall be made to such retailer until permitted by the tax commissioner.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-03-05

**81-12-01-09. Commercial credit for liquor.** The normal commercial credit between liquor wholesalers and retailers is thirty days. Any wholesaler receiving a check from a retailer which is returned by the bank due to insufficient funds which was given for merchandise received shall immediately notify the retailer. If the check is not made good within forty-eight hours, the wholesaler shall notify the wholesaler's competitors and the tax commissioner. Any wholesaler having an unpaid retail account for merchandise received which is in excess of thirty days shall notify the wholesaler's competitors and the tax commissioner. No sale shall be made by any wholesaler to the account of a retailer who has or had possession of such merchandise until said delinquent account is paid in full and permitted by the tax commissioner. A retail account may not be deemed delinquent for any alleged sale in any instance where there exists a bona fide dispute between the licensee and the wholesaler as to the amount owing as a result of the alleged sale.

**History:** Effective June 1, 2002.

**General Authority:** NDCC 5-03-05

**Law Implemented:** NDCC 5-01-11, 5-03-01, 5-03-04, 5-03-05, 5-03-06

**TITLE 82**

**BOARD OF TRUSTEES OF THE TEACHERS' FUND FOR RETIREMENT**



**MAY 2002**

**CHAPTER 82-05-01**

**82-05-01-03. Designation of beneficiary.** The teacher shall designate a survivor or a beneficiary in writing on forms provided by the fund prior to the beginning of benefit payments.

If the teacher is married, the teacher's spouse must be named as the primary beneficiary or the teacher must provide written spousal approval to name an alternate beneficiary. If the teacher is not married, or if the teacher has written spousal consent, the teacher may name any person, organization, church, or charity as beneficiary of the teacher's retirement account. If more than one beneficiary is named, the beneficiaries are not eligible to receive a monthly annuity for life. Multiple beneficiaries receiving a survivor benefit must select the same form of payment.

After benefit payments have begun, the teacher may not change the designated survivor or beneficiary, except under the following circumstances:

1. Teachers who select the single life, five-year term certain and life, or ten-year term certain and life annuity plans may change their beneficiary at any time.
2. Teachers who select the one hundred percent joint and survivor or fifty percent joint and survivor annuity plans may only name one beneficiary and may not change their beneficiary after retirement, except under the following circumstances:
  - a. If the teacher's designated beneficiary precedes the teacher in death; or
  - b. If the marriage of a teacher and the designated beneficiary is dissolved and the divorce decree provides for sole retention of the retirement benefits by the teacher.

In these cases, the form of benefits shall automatically revert to the standard form of benefit payment under section 82-05-02-01 and a new

beneficiary may be designated. The teacher, upon remarriage, may designate the new spouse as the primary beneficiary and may elect a joint and survivor benefit option under section 82-05-02-02.

**History:** Effective September 1, 1990; amended effective April 1, 1994; May 1, 2000; May 1, 2002.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16



## CHAPTER 82-05-02

### 82-05-02-02. Optional forms of benefit payments.

1. A teacher may elect to receive benefits under article 82-05 in any one of the following forms:
  - 1: a. **Option I.** A one hundred percent joint and survivor annuity.
  - 2: b. **Option II.** A fifty percent joint and survivor annuity.
  - 3: c. **Option III.** An annuity payable to the teacher or the teacher's designated beneficiary for the life of the teacher or sixty months, whichever is longer.
  - 4: d. **Option IV.** An annuity payable to the teacher or the teacher's designated beneficiary for the life of the teacher or one hundred twenty months, whichever is longer.
2. A married member's spouse, if designated as beneficiary, must consent in writing to the form of payment option elected by the member at retirement. If spousal consent is not obtained, the form of benefit payment option will be the fifty percent joint and survivor option.
3. Benefits under the optional forms of payment must be determined on an actuarially equivalent basis. The teacher's choice of benefit under this section is irrevocable once the teacher has begun receiving benefits except under the following circumstances:
  - 1: a. Under the single life, five-year term certain and life, and ten-year term certain and life annuity options, if a retired teacher marries, that teacher may change that teacher's beneficiary under section 82-05-01-03 and form of benefit payment to a joint and survivor option.
  - 2: b. Under the one hundred percent joint and survivor and fifty percent joint and survivor annuity options, if a retired teacher's designated beneficiary precedes the teacher in death, or if the marriage of a teacher and the designated beneficiary is dissolved and the divorce decree provides for sole retention of the retirement benefits by the teacher, the form of benefits shall automatically revert to the standard form of benefit payment under section 82-05-02-01 and a new beneficiary may be designated under section 82-05-01-03. The teacher, upon remarriage, may designate the new spouse as the primary beneficiary and may elect a joint and survivor option.

4. The teacher must provide proof of the teacher's good health before the board can permit a change in the designated beneficiary under the joint and survivor options. A medical examination conducted by a licensed medical doctor is required.
  
5. The teacher is required to provide proof of age for the new beneficiary. The board must adjust the monthly retirement benefit to the actuarially equivalent amount based on the new designated beneficiary's age.

**History:** Effective September 1, 1990; amended effective April 1, 1994; May 1, 2000; May 1, 2002.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-16

**CHAPTER 82-07-02**  
**RIGHT TO FORMAL HEARING AND APPEAL**

[Repealed effective May 1, 2002]

**CHAPTER 82-08-01**

**82-08-01-03. Format for a qualified domestic relations order.** A qualified domestic relations order must be substantially in the following form:

ACTIVE OR INACTIVE MEMBERS

STATE OF NORTH DAKOTA		IN DISTRICT COURT
COUNTY OF _____	_____	JUDICIAL DISTRICT
_____ )	)	
Plaintiff, )	)	
	)	QUALIFIED DOMESTIC
	)	RELATIONS ORDER
-vs- )	)	
	)	Case No. _____
	)	
_____ )	)	
Defendant. )	)	

.....

This Order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the North Dakota Teachers' Fund for Retirement, hereafter referred to as the "Plan". The Order is made pursuant to North Dakota Century Code section 15-39.1-12.2. The Order is an integral part of the judgment entered on [DATE OF DIVORCE] granting a divorce to the above-entitled parties. [This Order is also drawn pursuant to the laws of the state of North Dakota relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of a marriage.] or [This Order is drawn pursuant to the laws of the state of North Dakota relating to the provision of child support to a minor child in actions for dissolution of a marriage.]

**BACKGROUND INFORMATION**

[MEMBER'S NAME AND SOCIAL SECURITY NUMBER] is the participating member whose last-known address is [MEMBER'S ADDRESS]. The member's date of birth is [MEMBER'S D.O.B.].

[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER] is the alternate payee whose last-known address is [ALTERNATE PAYEE'S ADDRESS]. The alternate payee's date of birth is [ALTERNATE PAYEE'S D.O.B.].

The participating member and the alternate payee were married on [DATE OF MARRIAGE].

IT IS HEREBY ORDERED THAT:

**I. BENEFITS**

Benefits under the plan are distributed as follows: (Choose one)

1. The alternate payee is awarded [ \_\_\_\_\_ %] of the member's accrued annuity benefit as of [DATE OF DIVORCE]; (OR)
2. The alternate payee is awarded [\$ \_\_\_\_\_] of the member's accrued annuity benefit as of [DATE OF DIVORCE].

**II. TIME OF BENEFIT RECEIPT**

Benefit payments to the alternate payee will begin: (Choose one)

1. When the participating member reaches normal retirement age under the plan. (OR)
2. When the participating member qualifies for early retirement. (Note: Benefits in this event are payable even if the member has not separated from covered employment.) (OR)
3. When the alternate payee reaches [DATE OR EVENT]. (Note: The date or event must be after the date participating member would qualify for early retirement but payment will not be later than when the participating member retires.) (OR)
4. When the participating member retires.

**III. DURATION OF PAYMENTS TO ALTERNATE PAYEE OVER THE LIFE OF THE ALTERNATE PAYEE** (Choose one)

~~NOTE: Choose the appropriate optional language as applicable under the following rules:~~

- ~~- Choose option A if the The benefits to the alternate payee are to be paid over the alternate payee's life. Option A must be chosen if the benefits to the alternate payee are to begin before the member's benefits are in pay status.~~
- ~~- Choose option B if the benefits to the alternate payee are to be paid over the member's life under the single life annuity option with no surviving spouse annuity benefits upon the member's death.~~
- ~~- Choose option C if the benefits to the alternate payee are to be paid over the member's life under one of the plan's joint and survivor or term~~

~~certain and life options with the alternate payee as the survivor beneficiary for continuing annuity payments upon the member's death.~~

~~A. OVER LIFE OF THE ALTERNATE PAYEE (Choose one)~~

- ~~1. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and shall cease upon the alternate payee's death. The payment shall be calculated on the basis of a single life annuity and will be actuarially adjusted based upon the plan's assumptions to reflect the life expectancy of the alternate payee.~~

~~(OR)~~

- ~~2. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and calculated on the basis of:~~

~~(Choose one)~~

- ~~(a) a 5-year term certain and life option; (OR)~~
- ~~(b) a 10-year term certain and life option.~~

~~The payment will be actuarially adjusted based upon the plan's assumptions to reflect the life expectancy of the alternate payee.~~

~~Upon the alternate payee's death, payments will continue to the alternate payee's designated beneficiary under the term certain and life option identified above.~~

~~B. OVER THE LIFE OF THE PARTICIPATING MEMBER (SINGLE LIFE ANNUITY)~~

~~The payments shall be made to the alternate payee on a monthly basis over the life of the participating member and shall cease upon the member's death.~~

~~C. OVER THE LIFE OF THE PARTICIPATING MEMBER (SURVIVOR OR TERM CERTAIN AND LIFE ANNUITY)~~

~~The payments shall be made to the alternate payee on a monthly basis over the life of the participating member with a continuing monthly annuity payable to the surviving alternate payee after the member's death. The amount of the payments to the alternate payee will be calculated on the basis of: (Choose one)~~

~~(a) a 100% joint and survivor annuity option (OR)~~

~~(b) a 50% joint and survivor annuity option (OR)~~

~~(c) a 5-year term certain and life option (OR)~~

~~(d) a 10-year term certain and life option.~~

**IV. MEMBER WITHDRAWS FROM RETIREMENT SYSTEM (Choose one)**

- A. If the participating member discontinues employment and withdraws the member account in a lump sum, the alternate payee shall receive [\_\_\_\_%] of the member's account balance as of [DATE OF DIVORCE] accumulated with interest as required by the Plan from the divorce date until the refund is paid; (OR)
- B. If the participating member discontinues employment and withdraws the member account in a lump sum, the alternate payee shall receive [\$\_\_\_\_] from the member's account balance accumulated with interest as required by the Plan from [DATE OF DIVORCE] until the refund is paid. [Note: The dollar amount in this option cannot exceed the member's account balance.]

**V. LIMITATIONS OF THIS ORDER (Order must reflect all provisions of this section.)**

- A. This Order recognizes the existence of the right of the alternate payee to receive all OR a portion of the benefits payable to the participating members as indicated above.
- B. Nothing contained in this Order shall be construed to require any Plan or Plan administrator:
1. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the participating member under the Plan.
  2. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the participating member.
  3. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order previously determined by the Plan administrator to be a qualified domestic relations order.
  4. To apply the provisions of this Order to disability benefits that the participating member may be entitled to receive.

- C. If the alternate payee dies prior to beginning receipt of benefits under this Order, the entire amount that may be due to the alternate payee reverts to the participating member.

~~{If payment option B or C is elected:}~~

~~Upon the alternate payee's death after payments begin, any remaining benefits due will revert to the participating member, or if the participating member is deceased, to the participating member's beneficiary.~~

- D. If the participating member dies prior to retirement, the alternate payee will receive [    %] share of the member's survivor benefits as of [DATE OF DIVORCE].
- E. The benefit enhancements provided by the North Dakota legislature for service during the marital relationship which are adopted after the end of the marital relationship apply to the alternate payee's portion of benefits under this Order.
- F. If participant or alternate payee receives any distribution that should not have been paid per this Order, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify RIO and comply with written instructions as to the distribution of the amount received.
- G. Alternate payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by RIO. The plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to alternate payee. Plan participant and alternate payee must comply with Internal Revenue Code and any applicable regulations.
- H. Alternate payee is ORDERED to provide the plan prompt written notification of any changes in alternate payee's mailing address. RIO shall not be liable for failing to make payments to alternate payee if RIO does not have current mailing address for alternate payee at time of payment.
- I. Alternate payee shall furnish a certified copy of this Order to RIO.
- J. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If RIO determines at any time that changes in the law, the administration of the plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by



this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 49 20\_\_\_\_\_.

(Judge Presiding)

**OR**

**RETIRED MEMBERS**

This Order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the North Dakota Teachers' Fund for Retirement, hereafter referred to as the "Plan". The Order is made pursuant to North Dakota Century Code section 15-39.1-12.2. The Order is an integral part of the judgment entered on [DATE OF DIVORCE] granting a divorce to the above-entitled parties. [This Order is also drawn pursuant to the laws of the state of North Dakota relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of a marriage.] or [This Order is drawn pursuant to the laws of the state of North Dakota relating to the provision of child support to a minor child in actions for dissolution of a marriage.]

**BACKGROUND INFORMATION**

[MEMBER'S NAME AND SOCIAL SECURITY NUMBER] is the participating member whose last-known address is [MEMBER'S ADDRESS]. The member's date of birth is [MEMBER'S D.O.B.].

[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER] is the alternate payee whose last-known address is [ALTERNATE PAYEE'S ADDRESS]. The alternate payee's date of birth is [ALTERNATE PAYEE'S D.O.B.].

The participating member and the alternate payee were married on [DATE OF MARRIAGE].

IT IS HEREBY ORDERED THAT:

**I. BENEFITS**

Benefits to the participating member under the plan are distributed as follows: (Choose one)

1. The alternate payee is awarded [   %] of the monthly retirement benefit as of [DATE OF DIVORCE]; (OR)
2. The alternate payee is awarded [\$   ] of the monthly retirement benefit as of [DATE OF DIVORCE].

## II. TIME OF BENEFIT RECEIPT.

The benefits are payable to the alternate payee in the month following receipt of this Order by the plan or plan administrator as the participating member is currently retired and receiving benefits under the Plan.

## III. DURATION OF BENEFITS TO ALTERNATE PAYEE OVER THE LIFE OF THE PARTICIPATING MEMBER

~~NOTE: Choose the appropriate optional language as applicable under the following rules:~~

- ~~- Choose option A if the benefits to the alternate payee are to be paid over the alternate payee's life.~~
- ~~- Choose option B if the benefits to the alternate payee are to be paid over the member's life under the single life annuity option with no surviving spouse annuity benefits upon the member's death.~~
- ~~- Choose option C if the benefits to the alternate payee are to be paid over the member's life under one of the plan's joint and survivor or term certain and life options with the alternate payee as the survivor beneficiary for continuing annuity payments upon the member's death.~~

### ~~A. OVER LIFE OF THE ALTERNATE PAYEE (Choose one)~~

- ~~1. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and shall cease upon the alternate payee's death. The payments shall be calculated on the basis of a single life annuity and will be actuarially adjusted based upon the Plan's assumptions to reflect the life expectancy of the alternate payee.~~

~~Upon the member's death, the alternate payee, if living, will receive the survivor benefits, if any, payable to the alternate payee under the annuity option existing at the time of the member's death.~~

~~(OR)~~

- ~~2. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and calculated on the basis of: (Choose one)~~

~~(a) a 5-year term certain and life option; (OR)~~

~~(b) a 10-year term certain and life option.~~

~~Upon the alternate payee's death, payments will continue to the alternate payee's designated beneficiary under the term certain and life option identified above.~~

~~Upon the member's death, the alternate payee, if living, will receive the survivor benefits, if any, payable to the alternate payee under the annuity option existing at the time of the member's death.~~

~~B. OVER THE LIFE OF THE PARTICIPATING MEMBER (SINGLE LIFE ANNUITY)~~

~~The payments shall be made to the alternate payee on a monthly basis over the life of the participating member and shall cease upon the member's death.~~

~~G. OVER THE LIFE OF THE PARTICIPATING MEMBER (SURVIVOR OR TERM CERTAIN AND LIFE ANNUITY)~~

~~The payments shall be made to the alternate payee on a monthly basis over the life of the participating member with and, if applicable, a continuing monthly annuity will be payable to the surviving alternate payee after the member's death. The amount of the payments to the alternate payee will be calculated on the basis of: (Choose the survivor annuity option in existence at the time of the divorce or legal separation. NOTE: The option indicated may not result in a change from the existing original option elected by the member.)~~

~~(1) Single life annuity option (OR)~~

~~(2) 100% joint and survivor option (OR)~~

~~(2) (3) 50% joint and survivor option (OR)~~

~~(3) (4) 5-year term certain and life option (OR)~~

~~(4) (5) 10-year term certain and life option.~~

**IV. LIMITATIONS OF THIS ORDER (Order must reflect all provisions of this section.)**

A. This Order recognizes the existence of the right of the alternate payee to receive all OR a portion of the benefits payable to the participating members as indicated above.

B. Nothing contained in this Order shall be construed to require any Plan or Plan administrator:

1. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the participating member under the Plan.-
  2. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the participating member.
  3. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order previously determined by the Plan administrator to be a qualified domestic relations order.
  4. To apply the provisions of this Order to disability benefits that the participating member may be entitled to receive.
- C. ~~If Upon the alternate payee dies prior to receipt of benefits under this order~~ payee's death, the entire amount that may be due to the alternate payee reverts to the participating member or to the alternate payee's beneficiary, if applicable.
- D. The benefit enhancements provided by the North Dakota legislature for service during the marital relationship which are adopted after the end of the marital relationship apply to the alternate payee's portion of benefits under this Order.
- E. If the participant or alternate payee receives any distribution that should not have been paid per this Order, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify RIO and comply with written instructions as to the distribution of the amount received.
- F. Alternate payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by RIO. The plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to alternate payee. Plan participant and alternate payee must comply with the Internal Revenue Code and any applicable regulations.
- G. Alternate payee is ORDERED to provide the plan prompt written notification of any changes in alternate payee's mailing address. RIO shall not be liable for failing to make payments to alternate payee if RIO does not have current mailing address for alternate payee at time of payment.
- H. Alternate payee shall furnish a certified copy of this Order to RIO.

I. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If RIO determines at any time that changes in the law, the administration of the plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 1920\_\_\_\_\_.

\_\_\_\_\_  
(Judge Presiding)

**History:** Effective April 1, 1994; amended effective January 1, 1998; May 1, 1998; May 1, 2002.

**General Authority:** NDCC 15-39.1-07

**Law Implemented:** NDCC 15-39.1-12.2

**ARTICLE 82-10**

**RIGHT TO FORMAL HEARING AND APPEAL**

Chapter  
82-10-01

Right to Formal Hearing and Appeal

**CHAPTER 82-10-01**  
**RIGHT TO FORMAL HEARING AND APPEAL**

Section  
82-10-01-01

Right to Formal Hearing and Appeal

**82-10-01-01. Right to formal hearing and appeal.** Any applicant aggrieved by a decision of the board may initiate a formal administrative action against the board in accordance with North Dakota Century Code chapter 28-32. The applicant must file a request for a formal hearing within thirty days after notice of the initial decision has been mailed or delivered. If an appeal is not filed within the thirty-day period, the initial decision of the board is final. If a request for a formal hearing is timely filed, notice of the hearing must be served at least thirty days before the date set for the hearing. The board shall request appointment of an administrative law judge from the office of administrative hearings to conduct the hearing and make recommended findings of fact, conclusions of law, and order. The board shall either accept the administrative law judge's recommended findings of fact, conclusions of law, and order or adopt its own findings of fact, conclusions of law, and order. The applicant may appeal the final decision resulting from this procedure to the district court in accordance with North Dakota Century Code chapter 28-32.

**History:** Effective May 1, 2002.  
**General Authority:** NDCC 15-39.1-07  
**Law Implemented:** NDCC 15-39.1-07

**TITLE 87**  
**BOARD OF VETERINARY MEDICAL EXAMINERS**





**JUNE 2002**

**CHAPTER 87-01.1-01**

**87-01.1-01-01. Examination - Waiver.**

1. To qualify for a North Dakota license, each applicant must take and pass a North Dakota examination, the national board examination, and the clinical competency test or the North American veterinary licensing examination. The North Dakota examination is a combination written jurisprudence examination and oral interview.
2. The board adopts the passing score on the examination recommended by the national board examination committee. Applicants must request that their examination scores be sent to the board.
3. The national board examination and clinical competency test or the North American veterinary licensing examination is required of all applicants for licensure in North Dakota who have been in practice less than five years. For an applicant who has been in practice more than five years, the applicant may petition the board to waive this requirement if the applicant meets the requirements of North Dakota Century Code section 43-29-07.2.
4. The North Dakota examination may not be waived.
5. A senior veterinary student may take the North Dakota test if the student has taken and passed the national board examination and the clinical competency test or the North American veterinary licensing examination and submits a letter from the dean of a veterinary college indicating the student's anticipated graduation date.

6. Candidates may take the North American veterinary licensing examination for the first time during the testing window ~~six~~ eight months prior to their expected graduation.

**History:** Effective January 1, 1999; amended effective November 1, 2000; June 1, 2002.

**General Authority:** NDCC 43-29-03, 43-29-07.2

**Law Implemented:** NDCC 43-29-07.2

**87-01.1-01-04. Veterinarians from nonaccredited institutions.**

1. For a graduate of a nonaccredited veterinary college to qualify to write the North Dakota examination, the graduate must have a certificate issued by the educational commission for foreign veterinary graduates or the educational equivalence program of the American association of veterinary state boards.
2. All credentials from foreign institutions must be translated into English over the signature and seal of the consul of the country in which such documents may have been issued and said consul must certify that said institution is recognized and approved by the authorities as a veterinary college in the country where it is located.
3. Candidates from nonaccredited colleges must be enrolled in the educational commission for foreign veterinary graduates program or the educational equivalence program of the American association of veterinary state boards in order to be approved to take the North American veterinary licensing examination.

**History:** Effective January 1, 1999; amended effective November 1, 2000; June 1, 2002.

**General Authority:** NDCC 43-29-03, 43-29-07.2

**Law Implemented:** NDCC 43-29-07.2

**TITLE 90**

**STATE BOARD WATER WELL CONTRACTORS**



MAY 2002

CHAPTER 90-01-01

**90-01-01-01. Organization of state board of water well contractors.**

1. **History.** The 1971 legislative assembly passed the act providing for licensing of water well contractors and creating the state board of water well contractors, codified as North Dakota Century Code chapter 43-35. The 1985 legislative assembly added pitless unit installers and the 1987 legislative assembly added monitoring well contractors to the coverage.
2. **Board membership.** The board consists of six members. The state engineer and the state health officer, or their duly authorized designees, are ex officio members. Two members are water well contractors appointed by the governor, one member is a pump and pitless unit installer appointed by the governor, and one member is appointed at large by the governor.
3. **Executive secretary and treasurer.** The executive secretary and treasurer of the board is appointed by the board, is responsible for the administration of the board's activities, and is responsible for the examining process provided for by North Dakota Century Code chapter 43-35.
4. **Inquiries.** Inquiries regarding the board or examinations should be addressed to the executive secretary and treasurer:

~~Mr. M. O. Lindvig~~  
~~Secretary-Treasurer~~  
~~State Board of Water Well Contractors~~  
~~State Water Commission~~  
~~State Office Building~~  
900 East Boulevard Avenue  
Bismarck, North Dakota 58505 58505-0850

**History:** Amended effective November 1, 1981; December 1, 1985; January 1, 1988; May 1, 2002.

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

**Law Implemented:** NDCC 28-32-02, 43-35-02

**CHAPTER 90-01-03**  
**CONTINUING EDUCATION**

<u>Section</u>	
<u>90-01-03-01</u>	<u>Continuing Education - Defined</u>
<u>90-01-03-02</u>	<u>Coursework</u>
<u>90-01-03-03</u>	<u>Preapproval by Board</u>
<u>90-01-03-04</u>	<u>Request Preapproval</u>
<u>90-01-03-05</u>	<u>Request Approval After Course</u>
<u>90-01-03-06</u>	<u>Hours</u>
<u>90-01-03-07</u>	<u>Hour Defined</u>
<u>90-01-03-08</u>	<u>Noncompliance</u>

**90-01-03-01. Continuing education - Defined.** As used in this chapter, "continuing education", unless the context otherwise requires, means accredited educational experience derived from participation in approved lectures, seminars, and correspondence courses.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-23

**90-01-03-02. Coursework.** The board will consider courses in the following areas to be acceptable when considering approval. Coursework may be provided by:

1. The national ground water association;
2. The North Dakota well drillers association;
3. The state department of health;
4. The state water commission; or
5. Any board-approved course provider.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-23

**90-01-03-03. Preapproval by board.** A continuing education course must be preapproved by the board unless otherwise provided by law.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-23

**90-01-03-04. Request preapproval.** The continuing education course provider or certificate holder shall request for preapproval of the continuing education coursework by submitting to the board a course outline, the instructor's name, the length of the training, and an explanation of how the training relates to the construction and service of water wells.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-23

**90-01-03-05. Request approval after course.** A certificate holder may request approval of education that was not preapproved by submitting to the board verification of attendance, a course outline, the instructor's name, the length of the training, an explanation of how the training relates to the construction and service of water wells, and an explanation of why preapproval was not obtained. In such instance, the board shall determine on a case-by-case basis whether to approve education that was not preapproved.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-23

**90-01-03-06. Hours.** Each certificate holder shall earn at least twelve hours of board-approved continuing education every two-year reporting cycle to qualify for certificate renewal. A new certificate holder is required to earn twelve hours of board-approved continuing education credits during the two years following the year of initial certification.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-23

**90-01-03-07. Hour defined.** An "hour" of continuing education means a minimum of fifty minutes of instruction.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-23

**90-01-03-08. Noncompliance.** Each certificate holder who fails to complete the twelve hours of continuing education during the reporting period shall not be eligible for certificate renewal. Such individual may complete the required hours prior to April first following the year in which the requirement is in effect and be eligible for certificate renewal. After April first, the certificate holder must reapply



and pass the examination required to initially obtain a certificate. No hours may be used for more than one reporting period.

**History:** Effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-17

**Law Implemented:** NDCC 43-35-17

## CHAPTER 90-02-01

**90-02-01-01. Preparation of examination.** The board shall arrange for an examination to be prepared which shall be presented to the board for approval. If the board finds that the proposed examination fairly tests the skills and knowledge needed to be a certified water well driller contractor, pump and pitless unit installer, or monitoring well contractor, it shall approve such examination and order its use. The examination shall be modified, revised, or changed from time to time at the discretion of the board.

**History:** Amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-12

**90-02-01-02. Supervision and correction.** The examination shall be given, supervised, and corrected by a representative appointed by the board, who shall report the results to the board ~~at its next meeting.~~

**History:** Amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-12

**90-02-01-03. Dates of examination.** The examination to become a certified water well contractor, pump and pitless unit installer, or monitoring well contractor shall be given four times a each year, during the months of February, May, August, and November. The exact date shall be announced by the appointed examination representative to all persons known to be interested, at least thirty days before the date established for the giving of the ~~exams~~ examinations.

**History:** Amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-12

**90-02-01-04. Place of examination.** The examination shall be given in the offices of the state water conservation commission in Bismarck, North Dakota.

**History:** Amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-12

## CHAPTER 90-02-02

### 90-02-02-02. Qualified applicants - How determined - Initial certification.

~~In the case of a party desiring registration for the first time, the~~ The board first must approve ~~any the application for of a party desiring certification; for the first time and~~ where ~~if~~ an applicant is so approved and has otherwise complied with the requirements of North Dakota Century Code sections 43-35-13 and 43-35-14, the applicant is to be regarded as qualified and shall be issued the proper certificate and decals.

**History:** Amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-13, 43-35-16

**90-02-02-02.1. Definition of one year's experience.** One year's year of experience as required by statute consists of twelve months of full-time employment in drilling constructing water wells, installing pump and pitless units, or constructing monitoring wells under the direct supervision of a certified water well contractor, pump and pitless unit installer, or monitoring well contractor which experience has occurred during the three years immediately preceding the date of application, or suitable vocational training approved by the board. The board may, upon application and request, approve equivalent experience under a nonlicensed water well driller contractor, pump and pitless unit installer, or monitoring well contractor if the experience was in a state other than ~~this state~~ North Dakota and if the board is satisfied that the experience was the equivalent of working under a certified water well contractor in ~~this state~~ North Dakota. The board may certify other experience as equivalent as it finds appropriate.

**History:** Effective March 1, 1984; amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-13

**90-02-02-05. Willful violation - Penalty.** Any person who is not certified as a water well contractor, pump and pitless unit installer, or monitoring well contractor who shall be found by the board to be in intentional violation of this title or of the applicable ~~statutes governing water well contracting shall~~ may not be certified as a water well contractor, pump and pitless unit installer, or monitoring well contractor within one year of such violation as determined by the board.

**History:** Amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-20

## CHAPTER 90-02-03

**90-02-03-03. In charge - Definition.** No ~~drill person~~ shall engage in water well drilling construction, pump and pitless unit installation, or monitoring well construction in this state unless the certified water well contractor, pump and pitless unit installer, or monitoring well contractor whose decal is ~~attached thereto~~ on the primary equipment shall actually be in charge of its operation. A person is in charge only when the person has ~~actually~~ actual supervisory power over the work and makes onsite inspections of the work and progress.

**History:** Amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-19

**90-02-03-04. Decal required.** Any water well drill equipment, pump and pitless unit equipment, or monitoring well equipment operating in ~~this state~~ North Dakota must prominently display a decal on the primary equipment that ~~such rig~~ is under the charge of a certified water well contractor, pump and pitless unit installer, or monitoring well contractor. Before beginning the operation of any rig water well equipment, pump and pitless unit equipment, or monitoring well equipment, the certified water well contractor, pump and pitless unit installer, or monitoring well contractor in charge shall secure from the board such a decal and cause it to be placed on ~~such rig~~ the primary equipment.

**History:** Amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-19

## CHAPTER 90-02-04

**90-02-04-02. Hearing officer.** In all proceedings the secretary shall request the attorney general office of administrative hearings of this state to designate a hearing officer to conduct the necessary hearings and proceedings. The person so designated shall be appointed such hearing officer. ~~If the attorney general does not designate anyone, the board shall proceed to appoint an impartial qualified individual to conduct such hearing.~~

**History:** Amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-20

**90-02-04-03. Record.** The board shall ~~provide for and compensate a certified court reporter to make a verbatim record of all hearings. Any party desiring a transcript of any hearing shall arrange to secure and pay for such transcript~~ make a record of all hearings. Any party may request a copy of the hearing record through the secretary or office of administrative hearings and by paying the associated costs.

**History:** Amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-19

**90-02-04-04. Violations - Penalty.** If the board shall find a certified water well contractor, pump and pitless unit installer, or monitoring well contractor to be in violation of the requirements of any section of North Dakota Century Code chapter 43-35 and any rule of this board or of any rule of the ~~health~~ state department of health for water well construction and ~~water well pump installation pitless unit installation or monitoring well construction~~, it shall order a suspension of the contractor's certification for a period of up to six months or a fine of up to five hundred dollars, or both. If the violation is a second offense, the board shall make a formal request to the state's attorney of the county in which the incident occurred to bring charges under North Dakota Century Code section 43-35-22. Upon determination that a third offense has been committed, the board shall revoke the certification and vigorously prosecute under all legal sanctions available.

**History:** Amended effective May 1, 2002.

**General Authority:** NDCC 28-32-02, 43-35-01, 43-35-10

**Law Implemented:** NDCC 43-35-20, 43-35-22



**TITLE 92**  
**WORKERS COMPENSATION BUREAU**





MAY 2002

CHAPTER 92-01-02

**92-01-02-11.1. Attorney's fees.** ~~Following an attempt to resolve a dispute through~~ Upon receipt of a certificate of program completion from the office of independent review, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to binding arbitration, administrative hearing, district court, or supreme court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. The bureau shall pay attorneys at ~~ninety-five~~ one hundred dollars per hour for all actual and reasonable time other than travel time. The bureau shall pay attorney travel time at ~~forty-five~~ fifty dollars per hour.
2. The bureau may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to ~~fifty~~ fifty-five dollars per hour for all actual and reasonable time other than travel time. The bureau shall pay travel time at ~~twenty-five~~ thirty dollars per hour. A "legal assistant" means any person with a bachelor's degree, ~~associate's degree, or correspondence degree~~ in a legal assistant or paralegal program; from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.
3. Total fees paid by the bureau for all legal services in connection with a dispute regarding an administrative order may not exceed the following:
  - a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.

- b. Two thousand one hundred dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement before the administrative hearing is held.
  - c. Four thousand two hundred dollars, plus reasonable costs incurred, if the employee prevails after an evidentiary hearing is held.
  - d. Four thousand five seven hundred twenty-five dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. Six thousand three hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.
  - e. Seven thousand three six hundred sixty-five dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. Eight thousand one five hundred five dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.
  - f. Six hundred dollars, plus reasonable costs incurred, for services in connection with binding arbitration, if the employee prevails.
  - g. One thousand one hundred fifty-five dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.
  - h. Four hundred dollars for review of a proposed settlement, if the employee to whom the settlement is offered was not represented by counsel at the time of the offer of settlement.
4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the bureau to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.
5. Upon application of the employee's attorney and a finding by the bureau that the legal or factual issues involved in the dispute are unusually complex, the bureau may approve payment of reasonable fees in excess of the maximum fees provided by subdivisions b, c, d, and e of subsection 3. All applications for fees in excess of the maximum fees

must contain a concise statement of the reasons for the request, including a summary of any factual or legal issues, justifying the request, and an explanation of why the issues are unusually complex. The bureau's denial of a request to exceed the attorney's fee cap is not a "dispute relating to payment or denial of an attorney's fee" under North Dakota Century Code section 65-02-08 which requires submission to a hearing officer or arbitrator for a decision. In determining whether the factual or legal issues are unusually complex, the bureau shall consider factors including the following:

- a. The extent of the prehearing and posthearing discovery;
  - b. The number of depositions;
  - c. The number of legal or factual issues in dispute; and
  - d. Whether the legal issues or relevant statutes have been previously interpreted by the North Dakota supreme court.
6. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).
7. If the bureau is obligated to pay the employee's attorney's fees, the attorney shall submit to the bureau a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The signature of the attorney constitutes a certificate by the attorney that the attorney has not sought or obtained payment, and will not seek payment of any fees or costs from the employee relative to the same dispute regarding an administrative order. The bureau may deny fees and costs that are determined to be excessive or frivolous.
8. The following costs will be reimbursed:
- a. Actual postage.
  - b. Actual toll charges for long-distance telephone calls.
  - c. Copying charges, at twenty cents per page.
  - d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state

travel expenses may be reimbursed only if approval for such travel is given, in advance, by the bureau.

- e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the bureau. Costs for typing and clerical or office services will not be reimbursed.

9. The following costs will not be reimbursed:

- a. Facsimile charges.
- b. Express mail.
- c. Additional copies of transcripts.
- d. Costs incurred to obtain medical records.
- e. On-line computer-assisted legal research.
- f. Copy charges for documents provided by the bureau.

The bureau shall reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

**History:** Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-02-15

**Law Implemented:** NDCC 65-02-08, 65-02-15, 65-10-03

**92-01-02-13. Merger, exchange, or transfer of business.**

1. **Definitions.** In this section:

- a. "Business entity" means any form of business organization, including proprietorships, partnerships, limited partnerships, cooperatives, limited liability companies, and corporations.
- b. "Constituent business" means a business entity of which a surviving entity is composed.
- c. "Surviving entity" means the business entity resulting from a merger, exchange, or transfer of business assets from one or more constituent businesses.

2. **Experience rating.** The surviving entity resulting from a merger, exchange, or transfer of business assets ~~retains the highest~~ will be assigned an experience rating of any constituent business entity merged, exchanged, or transferred derived from the averaged premium, payroll, and loss history of all the accounts involved in the merger, exchange, or transfer. The bureau may change the experience rating of the surviving entity.

3. **Compensation coverage.**

a. The bureau may transfer compensation coverage of any constituent business to the surviving entity. The bureau may require the surviving entity to provide information on the constituent businesses of which it is comprised and its owners, officers, directors, partners, and managers. If the bureau determines a surviving entity is merely a continuation of the constituent business or businesses, the bureau may transfer the premium liability to the surviving entity or decline coverage until the delinquency is resolved.

b. Factors the bureau may consider in determining if a surviving entity is a mere continuation of a constituent business include:

(1) Whether there is basic continuity of the constituent business in the surviving entity as shown by retention of key personnel, assets, and general business operations.

(2) Whether the surviving entity continues to use the same business location or telephone numbers.

(3) Whether employees transferred from the constituent business to the surviving entity.

(4) Whether the surviving entity holds itself out as the effective continuation of the constituent business.

c. The bureau shall calculate premium based on actual taxable payroll for the period of time involved. The bureau may prorate the payroll cap based on one-twelfth of the statutory payroll cap per month per employee at the beginning of the period of time involved.

**History:** Effective June 1, 1990; amended effective January 1, 1992; April 1, 1997; May 1, 2002.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-04-01

**92-01-02-14. Procedure for penalizing employers accounts for failure to make pay premium or failure to submit payroll reports.**

1. ~~If an employer has an open account with the bureau, the bureau shall send annually to the employer a form on which the employer shall report payroll expenditures for the preceding payroll year. Electronic report of payroll information in a format approved by the bureau also is acceptable.~~
  - a. ~~An employer shall complete its payroll report and return it to the bureau no later than the fifteenth day of the month after the employer's payroll year expires. The bureau shall bill each employer annually for premiums as provided by North Dakota Century Code chapter 65-04. If an employer has an open account with the bureau, the bureau shall send to the employer annually a form on which the employer shall report payroll expenditures from the preceding payroll year. An electronic report of payroll information in a format approved by the bureau is acceptable. The employer shall complete the report and send it to the bureau by the last day of the month following the expiration date of the employer's payroll period. The bureau shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report. The bureau shall send the first billing statement approximately fifteen days after the report is received by the bureau, to the employer by regular mail to the employer's last-known address. The first billing statement must identify the amount due from the employer and the payment due date. The statement must explain the installment payment option.~~
2. The payment due date for an employer's account is thirty days from the date of billing indicated on the premium billing statement.
3. If the bureau does not receive full payment or the minimum installment payment indicated on the premium billing statement, on or before the payment due date, the bureau shall send a second billing statement. This second statement must identify the amount due from the employer and the penalties to which the employer may be subjected under this section and North Dakota Century Code chapter 65-04.
4. If the minimum installment payment remains unpaid thirty days after the bureau sends the second billing statement to the employer, the bureau shall notify the employer by regular mail to the employer's last-known address that:
  - a. The employer is uninsured;
  - b. The employer is in default and may be assessed a penalty of two hundred fifty dollars plus two percent of the amount of premium, penalties, and interest in default; and
  - c. The employer's account has been referred to the collections unit of the policyholder services department.

5. The bureau may extend coverage by written binder if the bureau and the employer have agreed in writing to a payment schedule on a delinquent account. If the employer is in default of the agreed payment schedule, however, that employer is not insured.
  
6. If the employer's payroll report is not timely received by the bureau, the bureau shall notify the employer, by regular mail addressed to the last-known address of the employer, of the delinquency of the report and ~~the penalties provided by North Dakota Century Code section 65-04-12 and this section:~~
  - b. ~~On the last day of the month following the month in which the employer's payroll year expired, the bureau shall assess a penalty of five hundred dollars and shall notify the employer of the further penalties provided by North Dakota Century Code section 65-04-12 and this section.~~
  
  - c. ~~On the fifteenth day of the second month~~ may assess a penalty of two thousand dollars against the employer's account.
  
7. If the payroll report is not received within forty-five days following the expiration of the employer's payroll year, the bureau shall assess a penalty of one thousand five hundred fifty dollars and shall cancel the employer's account. The bureau shall notify the employer by regular mail addressed to the employer's last-known address that the employer is uninsured.
  
8. At any time after sixty days following the expiration of the employer's payroll year, when the employer has failed to submit a payroll report, the bureau may bill the employer at the wage cap per employee using the number of employees reported per rate classification from a previous year of actual or estimated payroll reported to the bureau. The bureau may also bill an employer account using data obtained from job service North Dakota to bill an employer who has failed to submit a payroll report. An employer whose premium has been calculated under this subsection may submit actual wages on an employer payroll report for the period billed and the bureau shall adjust the employer's account.
  
9. If the bureau receives an employer payroll report more than sixty days after the expiration of the employer's payroll period, the employer's premium billing due date is fifteen days following the expiration of the employer's payroll period. Any employer account billed without benefit of the employer payroll report has a premium billing due date which is fifteen days following the expiration of the employer payroll's payroll year.

2- 10. If the employer does not have an open account with the bureau, the bureau shall select an employer account number and shall send the employer a payroll report form by regular mail. The bureau shall notify the employer of the penalties provided by North Dakota Century Code ~~section 65-04-12~~ chapter 65-04 and this section.

11. The employer shall submit the completed payroll report within fifteen days of the bureau's request. ~~An~~ The bureau shall consider an unsigned or incomplete submission ~~shall be deemed to be~~ a failure or refusal to furnish the report. If the payroll report is not timely received by the bureau, the bureau ~~shall~~ may assess a penalty of up to two thousand dollars and shall notify the employer that the employer is uninsured.

**History:** Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002.

**General Authority:** NDCC 65-02-08, ~~65-04-12~~ 65-04-33

**Law Implemented:** NDCC ~~65-04-12~~ 65-04-33

**92-01-02-16. Expiration date change.** ~~Upon the~~ At an employer's request of a riskholder, the bureau may change the expiration date on the riskholder's employer's account and. The bureau shall calculate premium based on actual taxable payroll for the period of time involved. The bureau may prorate the payroll cap based on one-twelfth of the statutory payroll cap per month per employee at the beginning of the period of time involved each employee up to the statutory payroll cap, prorated for the actual number of days in the adjusted payroll period.

**History:** Effective June 1, 1990; amended effective January 1, 1994; April 1, 1997; May 1, 2002.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-04-01

**92-01-02-17. Reporting payroll for period of noncompliance.** If the noncompliance period of a new account is less than twelve months, the following procedure will apply: The payroll will be prorated on a basis of the maximum of one-twelfth of the statutory payroll cap per month per employee for the period of time involved. If the salary paid is less than the amount of one-twelfth of the statutory payroll cap per month, the full amount is reportable. If an employee ceased employment during the noncompliance period, the gross payroll of the employee is prorated over the period of noncompliance up to a maximum of one-twelfth of the statutory payroll cap per month for the period of noncompliance. An account in noncompliance is uninsured until a completed application for workers' compensation

*Changes  
15  
all that  
changed  
was GA  
and L.I.  
so we  
made change  
but not  
in here*



insurance coverage pursuant to North Dakota Century Code ~~section 65-01-05~~ and chapter 65-04 is received by the bureau.

**History:** Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-09-01

**92-01-02-18.1. Application of discount to experience rate for employers establishing operations in this state.** If an employer who is beginning operations in this state can prove that for similar operations in another jurisdiction the employer received an experience-rate-based discount on workers' compensation premiums in that jurisdiction, the bureau may discount that employer's premium in this state ~~not to exceed a maximum discount of ten percent~~. The employer must be setting up a permanent operation and the discount must be part of an economic development package. The discount will be applied retrospectively after a successful year of participation within the bureau's risk management program. Premium discounts for the employer's second through fourth years of operation in this state will be retrospectively based on the employer's most recent out-of-state experience rate and continued successful participation within the bureau's risk management program. Premiums for the employer's fifth year of operation in this state will be based on the applicable experience rating programs in this state. The out-of-state employer discount may not exceed the maximum allowable discount under the bureau's experience rating plans. An employer who self-insured in another jurisdiction is not eligible for the discount.

**History:** Effective April 1, 1997; amended effective May 1, 2002.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-04-01, 65-04-17

**92-01-02-19. Employer relief after third-party recovery.** Upon third-party recovery pursuant to North Dakota Century Code section 65-01-09 in claims which have been accepted by the bureau and ~~where~~ when the employer's experience rating has been affected, relief will be given to the employer from the date of injury to the balance of the experience rating period. Relief will be given to the extent of the actual net recovery made by or on behalf of the bureau, after deduction from the gross recovery of the costs and attorney fees allowable under North Dakota Century Code section 65-01-09.

"Relief will be given" indicates that the amount of money recovered by the bureau in a third-party action will be deducted from the amount charged against the employer's experience rating. This may result in a decreased premium for that employer in the future. ~~The bureau may not refund any credit balance resulting from such relief.~~ An account that has been canceled is not entitled to relief under this section.

Relief will also be given to the extent of the employer reimbursement paid by the employer pursuant to North Dakota Century Code section 65-05-07.2, provided that the net recovery made by or on behalf of the bureau is equal to or exceeds the total chargeable expenditures made by the bureau on the claim plus the reimbursement made by the employer. An employer who has not timely paid reimbursement under North Dakota Century Code section 65-05-07.2 forfeits any right to relief for that reimbursement.

**History:** Effective June 1, 1990; amended effective January 1, 1996; May 1, 2002.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-01-09, 65-04-04.3, 65-04-17, 65-05-07.2

**92-01-02-20. Classification of employments - Premium rates.** ~~Classifications and premium rates, taking into consideration hazards and risks of different occupations, must be those classifications contained in the document documents entitled "North Dakota Workers Compensation Bureau Classification Manual", 1995 edition, and premium rates contained in the document entitled, and "ND Workers Compensation Bureau Rates", 1995 edition, which are hereby adopted by reference thereto and incorporated within this section as though set out in full herein. When classifying employment or assigning a premium rate, the bureau must use the edition of the manuals in effect during the policy period in which the premium is incurred.~~

Premium rates must be adjusted annually as recommended by the bureau's actuaries based upon the criteria ~~set forth~~ found in North Dakota Century Code section 65-04-01.

The minimum premium charge for all accounts ~~will be~~ is one hundred twenty-five dollars per year.

**History:** Effective June 1, 1990; amended effective July 1, 1990; July 1, 1991; July 1, 1992; July 1, 1993; July 1, 1994; July 1, 1996; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-04-01

**Law Implemented:** NDCC 65-04-01

**92-01-02-21. Employee service arrangements.**

1. As used in this section, "staffing service" means an employer under subsection 3 of section 65-01-08 which offers its services to the public, provides employees' services to more than one client company, and was not created for the purpose of hiring and leasing back the employees of specific client companies.
2. As used in this section, "client company" means an employer under subsection 3 of North Dakota Century Code section 65-01-08 who hires

a staffing service for the purpose of providing employees to work for the client company.

3. Responsibility for payment of premium.

- a. Rate classifications for employees provided by a staffing service must be those which would apply as if the work were performed by the employees for of the client company.
- b. The bureau shall apply the experience modifier of the staffing service to the premiums attributed to an employee service arrangement unless the bureau determines the entity is not a staffing service as defined by this rule.
- c. For purposes of the payment of premium, a staffing company is considered a subcontractor and a client company is considered a general contractor pursuant to subdivision c of subsection 17 of North Dakota Century Code section 65-01-02.
- d. A staffing service that provides employees to a client company that has been determined to be uninsured or ineligible for coverage under North Dakota Century Code sections 65-04-27.1 and 65-04-33 may not secure workers' compensation coverage for those employees.

~~3.~~ 4. Determination of staffing service.

- a. The bureau ~~may~~ shall determine whether an entity is a staffing service under this rule and North Dakota Century Code section 65-01-08. If the bureau determines an entity is not a staffing service, the client company ~~shall be~~ is responsible for maintaining a workers' compensation account and ~~for the payment of~~ paying the premium for coverage of the employees.
- b. The factors the bureau may consider when determining whether an entity is a staffing service under this rule include the number of client companies handled by the staffing service, the length of time the staffing service has been in existence, the extent to which the staffing service extends its services to the general public, the degree to which the client company and staffing service are separate and unrelated business entities, the repetition of officers or managers between the client company and staffing service, and the extent to which a client company has an ownership or other interest in the staffing service.

- c. The bureau may require information from any staffing service, including a list of current client company accounts, staffing assignments, payroll information, and rate classification information.
- d. A client company shall provide any information requested by the bureau regarding the identity of any staffing service with which it has contracted.

**History:** Effective July 1, 1991; amended effective January 1, 1992; April 1, 1997; August 1, 1998; May 1, 2000; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-04-17

**Law Implemented:** NDCC 65-01-08, 65-04-17

#### **92-01-02-23. Installment payment of premiums.**

1. On March thirty-first of each year, the bureau shall establish the quarterly interest rate to be charged to ~~those~~ accounts with policy periods renewing between July first of ~~that year~~ and June thirtieth of the following year, which elect to pay premium by ~~quarterly~~ installments. For the purposes of North Dakota Century Code ~~section~~ sections 65-04-20 and 65-04-33, the interest rate is the base rate posted by the Bank of North Dakota plus two and one-half percent. The interest rate may not be lower than six percent.
2. Premium subject to installments will be limited to the premium for the advance premium only. Prior period premium deficiencies must be paid in full within the original premium due date. ~~Policy periods beginning on or after July 1, 1991, will be eligible for installment payments under this section:~~
3. ~~Default on payment of any installment payment will cause~~ causes the entire premium balance to be due immediately.

**History:** Effective November 1, 1991; amended effective January 1, 1996; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-04-20

**Law Implemented:** NDCC 65-04-20, 65-04-24

#### **92-01-02-24. Rehabilitation services.**

1. When an employment opportunity suited to an employee's education, experience, and marketable skills is identified within thirty-five miles [56.33 kilometers] from the employee's home, the appropriate priority option must be identified as return to related occupation in the local job pool under subdivision e of subsection 4 of North Dakota Century Code section 65-05.1-01, and relocation expense under subsection 3 of North Dakota Century Code section 65-05.1-06.1 may not be paid.

2. The bureau may award services to move an employee's household where the employee has actually located work under subdivision e of subsection 2 of North Dakota Century Code section 65-05.1-06.1 only when the employee identifies the job he the employee will perform, his the employee's employer, and his the employee's destination. A relocation award must be the actual cost of moving the household to the location where work has been obtained. A minimum of two bids detailing the costs of relocation must be submitted to the bureau for approval prior to incurring the cost. The bureau shall pay per diem expenses, as set forth under subsection 2 of North Dakota Century Code section 65-05-28, for the employee only. Reimbursement for mileage expenses may not be paid for more than one motor vehicle.
3. When the rehabilitation award is short-term or long-term training, the bureau shall pay the actual cost of books, tuition, and school supplies required by the school. The school must provide documentation of the costs necessary for completion of the program in which the employee is enrolled. Reimbursable school costs may not exceed those charged to other students participating in the same program. The award for school supplies may not exceed twenty-five dollars per quarter or thirty dollars per semester unless the employee obtains prior approval of the bureau by showing that the expenses are reasonable and necessary. A rehabilitation award for short-term or long-term training may include tutoring assistance to employees who require tutoring to maintain a passing grade. Payment of tutoring services will be authorized when these services are not available as part of the training program. The award for tutoring services may not exceed the usual and customary rate established by the school. Expenses such as association dues or subscriptions may be reimbursed only if that expense is a course requirement.
4. An award for short-term or long-term training which includes an additional twenty-five percent wage-loss allowance to maintain two domiciles as provided in subdivision b of subsection 2 of North Dakota Century Code section 65-05.1-06.1 may continue only while the employee is actually enrolled or participating in the training program, and is actually maintaining two domiciles.
5. An employee who is required to be in attendance at a training facility for at least three days a week is determined to be attending on a daily basis for purposes of determining eligibility for the twenty-five percent second domicile allowance.
6. An award of a specified number of weeks of training means training must be completed during the specified period of weeks, and rehabilitation benefits may be paid only for the specified number of weeks of training.

7. The bureau may reimburse an employee's travel and personal expenses for attendance at an adult learning center or skill enhancement program at the request of the employee and upon the approval of the claims analyst. All claims for reimbursement must be supported by the original vendor receipt and must be submitted within one year of the date the expense was incurred. The bureau shall reimburse these expenses at the rates in effect on the date of travel or the date the expense was incurred at which state employees are paid per diem and mileage, or reimburse the actual cost of meals and lodging plus mileage, whichever is less. Mileage calculations will be based upon atlas or map mileage from city limit to city limit and will not include intracity mileage. The bureau may not reimburse mileage or travel expenses when the distance traveled is less than fifty miles one way, unless the total mileage in a calendar month equals or exceeds two hundred miles.

**History:** Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; February 1, 1998; May 1, 2002.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-05.1

**92-01-02-25. Permanent impairment evaluations and disputes.**

1. Definitions:

- a. "Maximum medical improvement" means the injured employee's recovery has progressed to the point where substantial further improvement is unlikely, based on reasonable medical probability and clinical findings indicate the medical condition is stable.
- b. "Medical dispute" means an employee has reached maximum medical improvement in connection with a work injury and has been evaluated for permanent impairment, and there is a disagreement between doctors arising from the evaluation that affects the amount of the award. It does not include disputes regarding proper interpretation or application of the American medical association guides to the evaluation of permanent impairment, ~~fourth~~ fifth edition.
- c. "Potentially eligible for an impairment award" means the medical evidence in the claim file indicates an injured employee has reached maximum medical improvement and has a permanent impairment caused by the work injury that will likely be in excess of fifteen percent whole body.

2. Permanent impairment evaluations must be performed in accordance with the American medical association guides to the evaluation of permanent impairment, ~~fourth~~ fifth edition, and modified by this section.

All permanent impairment reports must include the opinion of the doctor on the cause of the impairment and must contain an apportionment if the impairment is caused by both work work-related and non-work-related injuries or conditions.

3. The bureau shall establish a list of medical specialists within the state who have the training and experience necessary to conduct an evaluation of permanent impairment. The bureau may include in the list medical specialists from other states if there is an insufficient number of specialists in a particular specialty within the state who agree to be listed. When an employee requests an evaluation of impairment, the bureau shall schedule an evaluation with a physician from the list. The bureau and employee may agree to an evaluation by a physician not on the current list. In the event of a medical dispute, the bureau shall furnish the list of appropriate specialists to the employee. The bureau and the employee, if they cannot agree on an independent medical specialist, shall choose a specialist by striking names of medical specialists from the appropriate specialty until a name is chosen.
4. Upon receiving a permanent impairment rating report from the doctor, the bureau shall audit the report and shall issue a decision awarding or denying permanent impairment benefits.
5. A permanent impairment award may not include a rating due solely to pain, including chronic pain; chronic pain syndrome; pain that is rated under section 13.8, table 13-22, or chapter 18 of the American medical association guides to the evaluation of permanent impairment, fifth edition; or pain beyond the pain associated with injuries and illnesses of specific organ systems rated under other chapters of the fifth edition.
6. Permanent mental and behavioral disorder impairment ratings.
  - a. Any physician determining permanent mental or behavioral disorder impairment shall:
    - (1) Include in the rating only those mental or behavioral disorder impairments not likely to improve despite medical treatment;
    - (2) Use the instructions contained in the American medical association guides to the evaluation of permanent impairment, ~~fourth~~ fifth edition, giving specific attention to:
      - (a) Chapter 4 13, "central and peripheral nervous system"; and
      - (b) Chapter 14, "mental and behavioral disorders"; and

- (3) Complete a full psychiatric assessment following the principles of the American medical association guides to the evaluation of permanent impairment, ~~fourth~~ fifth edition, including:
- (a) A nationally accepted and validated psychiatric diagnosis made according to established standards of the American psychiatric association as contemplated by the American medical association guides to the evaluation of permanent impairment, ~~fourth~~ fifth edition; and
  - (b) A complete history of the impairment, associated stressors, treatment, attempts at rehabilitation, and premorbid history and a determination of causality and apportionment.
- b. If the permanent impairment is due to organic deficits of the brain and results in disturbances of complex integrated cerebral function, emotional disturbance, or consciousness disturbance, then chapter 4 13, "central and peripheral nervous system", must be consulted and may be used, when appropriate, with chapter 14, "mental and behavioral disorders". The same permanent impairment may not be rated in both sections. The purpose is to rate the overall functioning, not each specific diagnosis. The impairment must be rated in accordance with the "permanent mental impairment rating work sheet" incorporated as appendix A to this chapter.
- c. The permanent impairment report must include a written summary of the mental evaluation and the "report work sheet" incorporated as appendix A to this chapter.
- d. If other work-related permanent impairment exists, a combined whole-body permanent impairment rating may be determined.

**History:** Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; May 1, 1998; May 1, 2000; May 1, 2002.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-05-12.2

**92-01-02-27. Medical and hospital fees - Reimbursement methods.** Maximum medical and hospital fees paid by the bureau, including reimbursement for pharmaceuticals and durable medical equipment, are determined in accordance with the most current edition of the publication entitled "North Dakota Workers Compensation Bureau Medical and Hospital Fees" ("Fee Schedules"). Reimbursement for services and procedures not addressed within the fee schedules will be determined on a "by report" basis, in which case a description of the nature, extent and need for the procedure or service, including the time, skills, equipment,



and any other pertinent facts necessary to furnish the procedure or service, must be provided to the bureau.

**History:** Effective January 1, 1992; amended effective January 1, 1994; October 1, 1998; January 1, 2000; May 1, 2002.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-02-08

**92-01-02-29. Medical services - Definitions.** The definitions found in North Dakota Century Code title 65 apply to terms contained in this title. In addition, unless the context otherwise requires, for purposes of sections 92-01-02-27 through 92-01-02-48:

1. "Attending doctor" means a doctor who is primarily responsible for the treatment of a claimant's compensable injury.
2. "Bill audit" means the review of medical bills and associated medical records by the bureau or the managed care vendor, including review for duplications, omissions, actual delivery of billed services and items; accuracy of charges and associated coding, coding documentation in accordance with health care finance administration guidelines, coverage, concurrent billing for services for covered and noncovered services, and application of fee schedules.
3. "Case management" means the ongoing coordination of medical services provided to a claimant, including:
  - a. Developing a treatment plan to provide appropriate medical services to a claimant.
  - b. Systematically monitoring the treatment rendered and the medical progress of the claimant.
  - c. Assessing whether alternative medical services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards.
  - d. Ensuring the claimant is following the prescribed medical plan.
  - e. Formulating a plan for keeping the claimant safely at work or expediting a safe return to work.
4. "Concurrent review" means the monitoring by the bureau or the managed care vendor for medical necessity and appropriateness, throughout the period of time in which designated medical services are being provided to the claimant, of the claimant's condition, treatments, procedures, and length of stay.

5. "Consulting doctor" means a licensed doctor who examines a claimant, or the claimant's medical record, at the request of the attending doctor to aid in diagnosis or treatment. A consulting doctor, at the request of the attending doctor, may provide specialized treatment of the compensable injury and give advice or an opinion regarding the treatment being rendered or considered for a claimant's injury.
6. "Elective surgery" means surgery that may be required in the process of recovery from an injury or illness but need not be done as an emergency to preserve life, function, or health. Pain, of itself, does not constitute a surgical emergency.
7. "Emergency" means a medical condition that manifests itself by symptoms of sufficient severity, which may include severe pain, to cause a prudent layperson possessing an average knowledge of health and medicine to reasonably conclude that immediate medical treatment is required to avoid serious impairment of a bodily function, or serious dysfunction of any body part, or jeopardizing the person's life.
8. "Fee schedule" means the publication entitled "North Dakota Workers Compensation Bureau Medical and Hospital Fees".
9. "Functional capacity evaluation" means an objective, directly observed, measurement of a claimant's ability to perform a variety of physical tasks combined with subjective analyses of abilities by the claimant and the evaluator. A physical tolerance screening and a Blankenship's functional evaluation are functional capacity evaluations.
10. "Managed care" means services performed by the bureau or a managed care vendor, including utilization review, preservice reviews, disability management services, case management services, ambulatory reviews, concurrent reviews, retrospective reviews, preadmission reviews, and medical bill audit.
11. "Managed care vendor" means an organization that is retained by the bureau to provide managed care services.
12. "Medical service" means a medical, surgical, chiropractic, psychological, dental, hospital, nursing, ambulance, and other related or ancillary service, including physical and occupational therapy and drugs, medicine, crutches, a prosthetic appliance, braces, and supports, and physical restoration and diagnostic services, or a service outlined in section 92-01-02-30.
13. "Medical service provider" means a doctor, health care provider, hospital, medical clinic, or vendor of medical services.

14. "Medically stationary" means the "date of maximum medical improvement" as defined in North Dakota Century Code section 65-01-02 has been reached.
15. "Notice of nonpayment" means the form by which a claimant is notified of charges denied by the bureau which are the claimant's personal responsibility.
16. "Palliative care" means a medical service rendered to alleviate symptoms without curing the underlying condition.
17. "Physical conditioning" means an individualized, graded exercise program designed to improve the overall cardiovascular, pulmonary, and neuromuscular condition of the claimant prior to or in conjunction with the claimant's return to any level of work. Work conditioning is the same as physical conditioning.
18. "Preservice review" means the evaluation by the bureau or a managed care vendor of a proposed medical service for medical necessity, appropriateness, and efficiency prior to the services being performed.
19. "Remittance advice" means the form used by the bureau to inform payees of the reasons for payment, reduction, or denial of medical services.
20. "Retrospective review" means the bureau's or a managed care vendor's review of a medical service for medical necessity, appropriateness, and efficiency after treatment has occurred.
21. "Special report" means a medical service provider's written response to a specific request from the bureau for information, including information on causation, aggravation, preexisting conditions, and clarification of complex medical conditions, requiring the creation of a new document or the previously unperformed analysis of existing data. The explanatory reports required for procedures designated as "by report" under section 92-01-02-27 are not special reports.
22. "Utilization review" means an evaluation of the necessity, appropriateness, efficiency, and quality of medical services provided to a claimant, based on medically accepted standards and an objective evaluation of the medical services.
23. "Utilization review department" means the bureau's utilization review department.
24. "Work hardening" means an individualized, medically prescribed and monitored, work-oriented treatment process which involves the claimant

participating in simulated or actual work tasks that are structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the claimant to a specified job.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-29.1. Medical necessity.**

1. A medical service or supply necessary to diagnose or treat a compensable injury, which is appropriate to the location of service, is medically necessary if it is widely accepted by the practicing peer group and has been determined to be safe and effective based on published, peer-reviewed, scientific studies.
2. Services that present a hazard in excess of the expected medical benefits are not medically necessary. Services that are controversial, obsolete, experimental, or investigative are not reimbursable unless specifically preapproved or authorized by the bureau. Requests for authorization must contain a description of the treatment and the expected benefits and results of the treatment.
3. The bureau will not authorize or pay for the following treatment:
  - a. ~~Massage therapy except when provided by a licensed physical therapist, chiropractor, or medical doctor~~ or acupuncture unless specifically preapproved or otherwise authorized by the bureau.
  - b. ~~Thermography; chemonucleolysis; prolotherapy; acupuncture~~ Chemonucleolysis; acupressure; reflexology; rolfing; injections of colchicine except to treat an attack of gout precipitated by a compensable injury; injections of chymopapain; injections of botox; injections of fibrosing or sclerosing agents except where varicose veins are secondary to a compensable injury; synvisc injections; viscosupplementation injections; and injections of substances other than cortisone, anesthetic, or contrast into the subarachnoid space (intrathecal injections).
  - c. Treatment to improve or maintain general health (i.e., prescriptions or injections of vitamins, nutritional supplements, diet and weight loss programs, programs to quit smoking) unless specifically preapproved or otherwise authorized by the bureau. Over-the-counter medications may be allowed in lieu of prescription medications when approved by the bureau and prescribed by the attending doctor. Dietary supplements, including minerals, vitamins,

and amino acids are reimbursable if a specific compensable dietary deficiency has been clinically established in the claimant. Vitamin B-12 injections are reimbursable if necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.

- d. Articles such as beds, hot tubs, chairs, Jacuzzis, vibrators, heating pads, home furnishings, waterbeds, exercise equipment, and gravity traction devices are not compensable except at the discretion of the bureau under exceptional circumstances.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

### **92-01-02-30. Medical services.**

1. Medical services.
  - a. Medical services that are not medically necessary are not reimbursable.
  - b. Frequency and extent of treatment may not be more than the nature of the injury or process of recovery requires, and must be provided in accordance with utilization and treatment standards as prescribed by the bureau or the managed care vendor. The bureau may require evidence of the efficacy of treatment.
2. Medical services may be reimbursed only when provided according to a written treatment plan. A copy of the treatment plan, signed by the attending medical service provider, must be provided to the bureau within fourteen days of beginning the treatment or within fourteen days of learning that the treatment is claimed to be work-related, whichever occurs later. However, a treatment plan is not required for a short course of treatment consisting of one or two visits.
3. For purposes of this section, a treatment plan must include:
  - a. Objectives, including the degree of restoration anticipated.
  - b. Measurable goals.
  - c. Modalities and specific therapies to be used.
  - d. Frequency and duration of treatments to be provided.

- e. Condition of the claimant which may require periodic modification of the plan of care based on:
  - (1) Improvements in the claimant's status.
  - (2) Failure of the claimant to improve as expected.
  - (3) Intervention of care rendered, including education of the claimant, when appropriate.
  - (4) Specific operative reports, test results, and consultation reports.
4. The cost of preparing a written treatment plan and supplying progress notes under this section is included in the fee for the medical service.
5. The treatment plan requirements of this section may be modified or waived by the bureau.
6. X-ray films must be of diagnostic quality. Billings for x-rays are not reimbursable without a report of the findings. Upon request of either the bureau or the managed care vendor, original x-ray films must be forwarded to the bureau or the managed care vendor. Films must be returned to the vendor. A reasonable charge may be made for the costs of delivery of films.
7. Unless the ordering physician states "dispense as written", a generic brand of therapeutic equivalence must be dispensed, provided the generic brand costs less. If the injured worker does not accept the generic equivalent at a lower price, the injured worker is responsible for the cost difference between the generic and brand name prescription medication.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-32. Physician assistant and nurse practitioner rules.**

1. Physician assistants and nurse practitioners may be reimbursed within the scope of their licenses for services performed under the supervision of a licensed physician that are required by their licensure.
2. ~~To be eligible to treat occupational injuries, the physician assistant or nurse practitioner must provide the bureau upon request:~~

- a. A copy of the person's license;
  - b. The name, address, and specialty of the person's supervising physician; and
  - c. Evidence of a reliable and rapid system of communication with the supervising physician.
3. The bureau must be notified of any change in supervising physician. Physician assistant or nurse practitioner fees will be paid at the rate of eighty percent of a doctor's fee for a comparable service. The bills for these services must be marked with modifier NP. Services provided by a physician assistant or nurse practitioner which meet the following criteria will be reimbursed at one hundred percent of the fee allowed a physician for those services:
- a. The services are rendered under the direct supervision of a physician;
  - b. The services are rendered in a clinical setting as an integral, although incidental, part of the physician's professional services in the course of diagnosis or treatment of an injury or illness; and
  - c. The physician must be physically onsite when and where service is provided.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-34. Treatment requiring authorization, preservice review, and retrospective review.**

1. Certain treatment procedures require prior authorization or preservice review by the bureau or its managed care vendor. Requests for authorization or preservice review must include a statement of the condition diagnosed; ~~ICD-9-CM codes~~; their relationship to the compensable injury; the medical documentation supporting medical necessity, an outline of the proposed treatment program, its length and components, ~~procedure codes~~ and expected prognosis.
2. Requesting prior authorization or preservice review is the responsibility of the medical service provider who provides or prescribes a service for which prior authorization or preservice review is required.

3. Medical service providers shall request prior authorization directly from the bureau rather than through the managed care vendor claims analyst for the items listed in this subsection. The bureau claims analyst shall respond to requests within thirty fourteen days.

- a. ~~Therapeutic injections. Therapeutic injections such as trigger point injections, facet joint injections, facet nerve block, sympathetic nerve block, epidurals, nerve root blocks, and peripheral nerve blocks can only be given to the anatomical sites of a compensable work injury. Prior to the first injections, the medical service provider shall submit a treatment plan outlining the medical necessity for injections, other active modalities, and instructions for an injured worker's home exercise treatment plan. The injections are to be given in conjunction with other active treatment modalities.~~

~~A maximum of three injections per visit will be reimbursable. A maximum of four injections per site will be allowed on an approved treatment plan, followed by an assessment period of two months, during which no injections will be allowed. The medical service provider shall submit a written treatment plan if additional injections are requested.~~

- b. ~~Home nursing or convalescent center care. When the attending doctor believes special or attendant (home nurse) care is needed the following information must be submitted:~~

- ~~(1) A description of the care required including estimated time required (i.e., catheterization, three times per day, thirty minutes; bathing, two times per day, one hour; toilet transfers as needed; dressing change, four times per day, two hours).~~
- ~~(2) The skill level or special training required to administer care (i.e., R.N.; L.P.N.; family member who has received special training; or no special training required).~~
- ~~(3) If known, the name and address of a person or facility willing to provide care.~~
- ~~(4) The length of time special or home nursing care will be required.~~

~~Approval of fees for home nurse or attendant care is negotiable based upon the care provided and the level of training of the provider. The bureau may authorize and pay for visiting nurse care needed to evaluate or instruct a home medical service provider. When the claimant or the claimant's family makes arrangements for caregivers, reimbursement will be issued directly to the claimant.~~



~~The claimant is responsible for reimbursing the home nursing care provider. Payment to individuals for services pursuant to this rule does not constitute an employer and employee relationship between the bureau and the individual.~~

e: Durable medical equipment.

- (1) The bureau will pay rental fees for equipment if the need for the equipment is for a short period of treatment during the acute phase of a compensable work injury. The bureau shall grant or deny authorization for reimbursement of equipment based on whether the claimant is eligible for coverage and whether the equipment prescribed is appropriate and medically necessary for treatment of the compensable injury. Rental extending beyond thirty days requires prior authorization from the bureau claims analyst. If the equipment is needed on a long-term basis, the bureau may purchase the equipment. The bureau claims analyst shall base its decision to purchase the equipment on a comparison of the projected rental costs of the equipment to its purchase price. The bureau shall purchase the equipment from the most cost-efficient source.
- (2) The bureau claims analyst will authorize and pay for prosthetics and orthotics as needed by the claimant because of a compensable work injury when substantiated by the attending doctor. If those items are furnished by the attending doctor or another provider, the bureau will reimburse the doctor or the provider pursuant to its fee schedule. Providers and doctors shall supply the bureau with a copy of their original invoice showing actual cost of the item upon request of the bureau. The bureau will repair or replace originally provided damaged, broken, or ~~worn out~~ worn-out prosthetics, orthotics, or special equipment devices upon documentation from the attending doctor that replacement or repair is needed. Prior authorization for replacements is required.
- (3) If submitted charges for supplies and implants exceed the usual and customary rates, charges will be reimbursed at the provider's purchase invoice plus twenty percent.
- (4) Equipment costing less than ~~one~~ five hundred dollars does not require prior authorization. This includes crutches, cervical collars, lumbar and rib belts, and other commonly used orthotics.

- d. b. Biofeedback programs; pain clinics; psychotherapy; physical rehabilitation programs, including health club memberships and work hardening programs; chronic pain management programs; and other programs designed to treat special problems.
  - e. c. Concurrent care. In some cases, treatment by more than one medical service provider may be allowed. The bureau claims analyst will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care. When requesting consideration for concurrent treatment, the attending doctor must provide the bureau claims analyst with the name, address, discipline, and specialty of all other medical service providers assisting in the treatment of the claimant and with an outline of their responsibility in the case and an estimate of how long concurrent care is needed. When concurrent treatment is allowed, the bureau will recognize one primary attending doctor, who is responsible for prescribing all medications if the primary attending doctor is a physician authorized to prescribe medications; directing the overall treatment program; providing copies of all reports and other data received from the involved medical service providers; and, in time loss cases, providing adequate certification evidence of the claimant's ability to perform work. The bureau claims analyst will approve concurrent care on a case-by-case basis. ~~The managed care vendor must be notified of all requests for concurrent care.~~ Except for emergency services, all treatments must be authorized by the claimant's attending doctor to be reimbursable.
  - d. Telemedicine. The bureau may pay for audio and video telecommunications instead of a face-to-face "hands on" appointment for the following appointments: office or other outpatient visits that fall within CPT codes 99241 through 99275, inclusive; new and established evaluation and management visits that fall within CPT codes 99201 through 99215, inclusive; individual psychotherapy visits that fall within CPT codes 90804 through 90809, inclusive; and pharmacologic management visits that fall within CPT code 90862. As a condition of payment, the patient must be present and participating in the telemedicine appointment. The professional fee payable is equal to the fee schedule amount for the service provided. The bureau may pay the originating site a facility fee, not to exceed twenty dollars.
4. Notwithstanding the requirements of this subsection 5, the bureau may designate certain exemptions from preservice review requirements in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers.

5. Medical service providers shall request preservice review from the ~~managed care vendor~~ utilization review department for:
- a. All nonemergent inpatient hospital admissions or nonemergent inpatient surgery, ~~inpatient physical therapy~~, and outpatient surgical procedures. For an inpatient stay that exceeds fourteen days, the provider shall request, on or before the fifteenth day, additional review of medical necessity for a continued stay.
  - b. All nonemergent major surgery. When the attending doctor or consulting doctor believes elective surgery is needed to treat a compensable injury, the attending doctor or the consulting doctor with the approval of the attending doctor, shall give the ~~managed care vendor~~ utilization review department actual notice at least twenty-four hours prior to the proposed surgery. Notice must give the medical information that substantiates the need for surgery, an estimate of the surgical date and the postsurgical recovery period, and the hospital where surgery is to be performed. When elective surgery is recommended, the ~~bureau or the managed care vendor~~ utilization review department may require an independent consultation with a doctor of the bureau's choice. The bureau shall notify the doctor who requested approval of the elective surgery, whether or not a consultation is desired. When requested, the consultation must be completed within thirty days after notice to the attending doctor. Within seven days of the consultation, the bureau shall notify the surgeon of the consultant's findings. If the attending doctor and consultant disagree about the need for surgery, the bureau may request a third independent opinion pursuant to North Dakota Century Code section 65-05-28. If, after reviewing the third opinion, the bureau believes the proposed surgery is excessive, inappropriate, or ineffective and the bureau cannot resolve the dispute with the attending doctor, the requesting doctor may request binding dispute resolution in accordance with section 92-01-02-46.
  - c. All imaging procedures, including CAT scan, magnetic resonance imaging, myelogram, and discogram, bonescans, and arthrograms. Tomograms, ~~bonescans, and EMGs~~ are subject to preservice review if requested in conjunction with one of the above imaging procedures. The bureau may waive preservice review requirements for these procedures when requested by a physician who is performing an independent medical examination or permanent partial impairment evaluation at the request of the bureau.
  - d. Physical therapy and occupational therapy treatment beyond the first ten treatments or beyond thirty days after first prescribed, whichever occurs first. The bureau may waive this requirement in

conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.

- e. Electrodiagnostic studies.
- f. Thermography.
- g. Vertebral axial decompression therapy (Vax-D treatment).
- h. Intradiscal electrothermal annuloplasty (IDET).
- i. Trigger point injections if more than three injections are required in a two-month period. No more than twenty injections may be paid over the life of a claim. If a trigger point injection is administered, the bureau may not pay for additional modalities such as cryotherapy and osteopathic manipulations performed in conjunction with the trigger point injection. For purposes of this paragraph, injections billed under CPT code 20552 or 20553 will count as a single injection. Only injections administered on or after May 1, 2002, will be applied toward the maximum number of injections allowed under this subdivision.
- j. Facet joint injections.
- k. Sacroiliac joint injections.
- l. Facet nerve blocks.
- m. Epidural steroid injections.
- n. Nerve root blocks.
- o. Peripheral nerve blocks.
- p. Botox injections.
- q. Stellate ganglion blocks.
- r. Cryoablation.
- s. Radio frequency lesioning.
- t. Facet rhizotomy.
- u. Prolotherapy.
- v. Implantation of stimulators and pumps.

6. Chiropractic providers shall request preservice review from the bureau's chiropractic managed care vendor for chiropractic treatment beyond the first twelve treatments or beyond sixty ninety days after the injury first treatment, whichever occurs first. The evaluation to determine a treatment plan is not subject to review. The bureau may waive this subdivision subsection in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.
- ~~5. 7. Concurrent review of emergency admissions is required within twenty-four hours, or the next business day, of emergency admission.~~
- ~~6. Hospitalization will be paid when medically necessary for treatment of the compensable injury. Unless the claimant's condition requires special care, ward or semiprivate accommodations will be paid. When the claimant's condition requires special nurses, a private room, or intensive care, the attending doctor may order these services subject to documentation supporting this need. Hospitalization solely for physical therapy, bed rest, or administration of injectable drugs will be paid only when admission has been recommended as approved by the managed care vendor. Discharge from the hospital must be at the earliest date possible consistent with proper health care. If transfer to a convalescent center or nursing home is indicated, prior arrangements should be made with the bureau or the managed care vendor. The bureau may designate diagnostic and surgical procedures that will be reimbursed only if performed in an outpatient setting when outpatient services are reasonably available and accessible to the claimant. When procedures so designated must be performed in an inpatient setting for reasons of medical necessity, preservice review must be obtained through the managed care vendor.~~
- ~~7. 8. The bureau may designate those diagnostic and surgical procedures that can be performed in other than a hospital inpatient setting.~~
- ~~8. 9. The utilization review department or managed care vendor must respond orally to the medical service provider and the bureau within twenty-four hours, or the next business day, of receiving the necessary information to complete a review and make a recommendation on the service. Within that time, the managed care vendor must either recommend approval or denial of the request, request additional information, request the claimant obtain a second opinion, or request an examination by the claimant's doctor. A recommendation to deny medical services must specify the reason for the denial. The managed care vendor must respond to the bureau in writing to each request for preservice review of medical services within seven days of receiving the necessary information to complete a review and make a recommendation.~~

- 9: 10. Retrospective review is limited to those situations ~~where~~ when the provider can prove, through a preponderance of the evidence, that the injured employee did not inform the provider, and the provider did not in fact know, that the condition was, or likely would be, covered under workers' compensation. All medical service providers are required to cooperate with the managed care vendor for retrospective review and are required to provide, without additional charge to the bureau or the managed care vendor, the medical information requested ~~by the managed care vendor~~ in relation to the reviewed service.
- 40: 11. The bureau must notify provider associations of the review requirements of this section prior to the effective date of these rules.

**History:** Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-40. Palliative care.**

1. After the employee has become medically stationary, palliative care is compensable without prior approval from the bureau only when it is necessary to monitor administration of prescription medication required to maintain the claimant in a medically stationary condition or to monitor the status of a prosthetic device.
2. If the ~~bureau's~~ bureau or its managed care vendor believes palliative care provided under subsection 1 is excessive, inappropriate, ineffectual, or in violation of the rules regarding the performance of medical services, review must be performed according to section 92-01-02-46.
3. When the claimant's doctor believes that palliative care after the claimant has reached medically stationary status is necessary, the doctor shall request authorization, in writing, for palliative care. The written request must be in a form prescribed by the bureau and must be submitted to the bureau prior to the commencement of the treatment. If the palliative care request is approved, services are payable from the date the approved treatment begins. The request must:
  - a. Contain all objective findings, and specify if there are none.
  - b. Identify the medical condition by ICD-9-CM diagnosis for which the palliative treatment is proposed.
  - c. Provide a proposed treatment plan that includes the specific treatment modalities, the name of the provider who will perform the

treatment, and the frequency and duration of the care to be given, not to exceed one hundred eighty days.

- d. Describe how the requested palliative care is related to the accepted compensable condition.
  - e. Describe how the proposed treatment will enable the claimant to continue employment or to perform the activities of daily living, and what the adverse effect would be to the claimant if the palliative care is not approved.
  - f. Any other information the bureau may request.
4. The bureau shall approve palliative care only when:
    - a. Other methods of care, including patient self-care, structural rehabilitative exercises, and lifestyle modifications are being utilized and documented;
    - b. Palliative care reduces both the severity and frequency of exacerbations that are clinically related to the compensable injury; and
    - c. Repeated attempts have been made to lengthen the time between treatments and clinical results clearly document that a significant deterioration of the compensable condition has resulted.
  5. If the attending doctor does not receive written notice from the bureau within thirty days of the receipt of the request for palliative care, which approves or disapproves the care, the request will be considered approved.
  6. When the request for palliative care is not approved, the bureau shall provide, in writing, specific reasons for not approving the care.
  7. When the bureau approves or disapproves the requested palliative care, the attending doctor, employer, or claimant may request binding dispute resolution under section 92-01-02-46.
  8. For the purposes of this section only, a claimant's condition must be determined to be medically stationary when the attending doctor or a preponderance of medical evidence indicates the claimant is "medically stationary" or uses other language meaning the same thing. When there is a conflict in the medical opinions, more weight must be given to medical opinions that are based on the most accurate history, on the most objective findings, on sound medical principles, and on clear and concise reasoning. When expert analysis is important, deference must

be given to the opinion of the doctor with the greatest expertise in the diagnosed condition. The date a claimant is medically stationary is the earliest date that a preponderance is established under this section. The date of the examination, not the date of the report, controls the medically stationary date. When a specific date is not indicated but the medical opinion states the claimant is medically stationary, the claimant is presumed medically stationary on the date of the last examination. This subsection does not govern determination of maximum medical improvement relating to a permanent impairment award.

**History:** Effective January 1, 1994; amended effective October 1, 1998; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-45.1. Provider responsibilities and billings.**

1. A provider may not submit a charge for a service which exceeds the amount the provider charges for the same service in cases unrelated to workers' compensation injuries.
2. All bills must be fully itemized, including ICD-9-CM codes, and services must be identified by code numbers and descriptions found in the fee schedules or as provided in these rules. The definitions of commonality in the guidelines found in the current procedural terminology must be used as guides governing the descriptions of services, except as provided in the fee schedules or in these rules. All bills must be submitted to the bureau within one year of the date of service or within one year of the date the bureau accepts liability for the work injury or condition.
3. All medical service providers shall submit bills referring to one claim only for medical services on current form UB 92 or form HCFA 1500, except for dental billings which must be submitted on American dental association J510 dental claim forms. Bills and reports must include:
  - a. The claimant's full name and address;
  - b. The claimant's claim number and social security number;
  - c. Date and nature of injury;
  - d. Area of body treated, including ICD-9-CM code identifying right or left, as appropriate;
  - e. Date of service;
  - f. Name and address of facility where the service was rendered;



- g. Name of medical service provider providing the service;
  - h. Physician's or supplier's billing name, address, zip code, phone telephone number; physician's unique physician identification number (UPIN); physician assistant's North Dakota state license or certification number; physical therapist's North Dakota state license number; advanced practice registered nurse's UPIN or North Dakota state license number;
  - i. Referring or ordering physician's UPIN;
  - j. Type of service;
  - k. Appropriate procedure code or hospital revenue code;
  - l. Description of service;
  - m. Charge for each service;
  - n. Units of service;
  - o. If dental, tooth numbers;
  - p. Total bill charge;
  - q. Name of medical service provider providing service along with the provider's tax identification number; and
  - r. Date of bills.
4. All records submitted by providers, including notes, except those provided by an emergency room physician and those on forms provided by the bureau, must be typed to ensure that they are legible and reproducible. Copies of office or progress notes are required for all followup visits. Office notes are not acceptable in lieu of requested narrative reports. Communications may not refer to more than one claim.
5. Providers shall submit with each bill a copy of medical records or reports which substantiate the nature and necessity of a service being billed and its relationship to the work injury, including the level, type, and extent of the service provided to claimants. Documentation required includes:
- a. Laboratory and pathology reports;
  - b. X-ray findings;
  - c. Operative reports;

- d. Office notes, physical therapy, and occupational therapy progress notes;
  - e. Consultation reports;
  - f. History, physical examination, and discharge summaries;
  - g. Special diagnostic study reports; and
  - h. Special or other requested narrative reports.
6. Providers submitting bills for filling prescriptions also shall include the prescribing provider's name on the bill.
7. When a provider submits a bill to the bureau for medical services, the provider shall submit a copy of the bill to the claimant to whom the services were provided. The copy must be stamped or printed with a legend that clearly indicates that it is a copy and is not to be paid by the claimant.
- ~~7.~~ 8. If the provider does not submit records with a bill, and still does not provide those records upon request of the bureau, the charges for which records were not supplied may not be paid by the bureau, unless the provider submits the records before the decision denying payment of those charges becomes final. The provider may also be liable for the penalty provided in subsection 6 of North Dakota Century Code section 65-05-07.
- ~~8.~~ 9. Disputes arising out of reduced or denied reimbursement are handled in accordance with section 92-01-02-46. In all cases of accepted compensable injury or illness under the jurisdiction of the workers' compensation law, a provider may not pursue payment from a claimant for treatment rendered to that claimant unless the payment for the treatment was denied because:
- a. The claimant sought treatment from that provider for conditions not related to the compensable injury or illness.
  - b. The claimant sought treatment from that provider which was not prescribed by the claimant's attending doctor. This includes ongoing treatment by the provider who is a nonattending doctor.
  - c. The claimant sought palliative care from that provider not compensable under section 92-01-02-40 after the claimant was provided notice that the palliative care service is not compensable.

- d. The claimant sought treatment from that provider after being notified that the treatment sought from that provider has been determined to be unscientific, unproven, outmoded, investigative, or experimental.
  - e. The claimant did not follow the requirements of subsection 1 of North Dakota Century Code section 65-05-28 regarding change of doctors before seeking treatment of the work injury from the provider requesting payment for that treatment.
  - f. The claimant is subject to North Dakota Century Code section 65-05-28.2, and the provider requesting payment is not a preferred provider and has not been approved as an alternative provider under subsection 2, 3, or 4 of North Dakota Century Code section 65-05-28.2.
- 9: ~~10.~~ 10. A medical service provider may not bill for services not provided to a claimant and may not bill multiple charges for the same service. Rebilling must indicate that the charges have been previously billed.
- 40: ~~11.~~ 11. Pursuant to North Dakota Century Code section 65-05-33, a medical service provider may not submit false or fraudulent billings.
- 44: ~~12.~~ 12. Only one office visit designation may be used at a time except for those code numbers relating specifically to additional time.
- 42: ~~13.~~ 13. When a claimant is seen initially in an emergency department and is admitted subsequently to the hospital for inpatient treatment, the services provided immediately prior to the admission are part of the inpatient treatment.
- ~~43.~~ 13. ~~Physician assistant or nurse practitioner fees will be paid at the rate of eighty percent of a doctor's fee for a comparable service. The bills for these services must be marked with the modifier NP.~~
14. A physical medicine modality or manipulation, when applied to two or more areas at one visit, is reimbursed at one hundred percent of the maximum allowable fee for the first area treated, fifty percent for the second area treated, and twenty-five percent for all subsequent areas treated.
15. When ultrasound, diathermy, microwave, infrared, and hot packs are used in combinations of two or more during one treatment session, only one may be reimbursed, unless two separate effects are demonstrated.
- ~~16.~~ 16. ~~When multiple areas are examined using CAT scan or magnetic resonance imaging, the first area examined will be reimbursed at the~~

~~allowable fee schedule amount, the second area at fifty percent, and all subsequent areas at twenty-five percent of the allowable fee schedule amount.~~

47. When a medical service provider is asked to review records or reports prepared by another medical service provider, the provider shall bill review of the records using CPT code 99080 with a descriptor of "record review". The billing must include the actual time spent reviewing the records or reports and must list the medical service provider's normal hourly rate for the review.
- 48: 17. When there is a dispute over the amount of a bill or the necessity of services rendered, the bureau shall pay the undisputed portion of the bill and provide specific reasons for nonpayment or reduction of each medical service code.
- 49: 18. If medical documentation outlines that a non-work-related condition is being treated concurrently with the compensable injury and that condition has no effect on the compensable injury, the bureau may reduce the charges submitted for treatment. In addition, the attending doctor must notify the bureau immediately and submit:
- a. A description or diagnosis of the non-work-related condition.
  - b. A description of the treatment being rendered.
  - c. The effect, if any, of the non-work-related condition on the compensable injury.

The attending doctor shall include a thorough explanation of how the non-work-related condition affects the compensable injury when the doctor requests authorization to treat the non-work-related condition. Temporary treatment of a non-work-related condition may be allowed, upon prior approval by the bureau, provided the condition directly delays recovery of the compensable injury. The bureau may not approve or pay for treatment for a known preexisting non-work-related condition for which the claimant was receiving treatment prior to the occurrence of the compensable injury, which is not delaying recovery of the compensable injury. The bureau may not pay for treatment of a non-work-related condition when it no longer exerts any influence upon the compensable injury. When treatment of a non-work-related condition is being rendered, the attending doctor shall submit reports monthly outlining the effect of treatment on both the non-work-related condition and the compensable injury.

- 20: 19. In cases of questionable liability when the bureau has not rendered a decision on compensability, the provider has billed the claimant or other

insurance, and the claim is subsequently allowed, the provider shall refund the claimant or other insurer in full and bill the bureau for services rendered.

- ~~21:~~ 20. The bureau may not pay for the cost of duplicating records when covering the treatment received by the claimant. If the bureau requests records in addition to those listed in subsection 5 or records prior to the date of injury, the bureau shall pay a minimum charge of five dollars for five or fewer pages and the minimum charge of five dollars for the first five pages plus thirty-five cents per page for every page after the first five pages.
- ~~22:~~ 21. The provider shall assign the correct approved billing code for the service rendered using the appropriate provider group designation. Bills received without codes will be returned to the provider.
- ~~23:~~ 22. Billing codes must be found in the most recent edition of the physician's current procedural terminology; health care financing administration common procedure coding system; code on dental procedures and nomenclature maintained by the American dental association; or any other code listed in the fee schedules.
- ~~24:~~ 23. A provider shall comply within thirty calendar days with the bureau's request for copies of existing medical data concerning the services provided, the patient's condition, the plan of treatment, and other issues pertaining to the bureau's determination of compensability, medical necessity, or excessiveness or the bureau may refuse payment for services provided by that provider.

**History:** Effective January 1, 1994; amended effective April 1, 1996; October 1, 1998; January 1, 2000; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07

**Law Implemented:** NDCC 65-02-20, 65-05-07, 65-05-28.2

#### **92-01-02-46. Medical services disputes.**

1. This rule provides the procedures followed for managed care disputes. Restrospective review is the procedure provided for disputing the denial of payment for a medical service charge based on failure to request prior authorization or preservice review. Binding dispute resolution is the procedure provided for disputing managed care recommendations, including palliative care recommendations and bill audit and review. Disputes not arising from managed care follow the reconsideration and hearing procedures provided by North Dakota Century Code sections 65-01-16 and 65-02-15.

2. When the bureau denies payment for a medical service charge because the provider did not properly request prior authorization or preservice review for that service, the provider may request a retrospective review of that service. Requests for retrospective review must be made in writing, within thirty days after the notice that payment for the service is denied, addressed to the bureau claims analyst assigned to handle the claimant's claim. Requests for retrospective review should not be sent to the managed care vendor. The request must contain:
  - a. The claimant's name.
  - b. The claim number.
  - c. The date of service.
  - d. A statement of why the provider did not know and should not have known that the injury or condition may be a compensable injury.
  - e. The information required to perform a preservice review or prior authorization of the service.

If the provider knew or should have known that the patient may have a compensable work injury when the medical services for that injury were provided, the request for retrospective review must be denied. If the provider did not know and should not have known that the patient may have a compensable work injury when the medical services for that injury were provided, a retrospective preservice review or preauthorization must be done in accordance with this chapter. If the bureau continues to deny payment for the service, the provider may request binding dispute resolution under this rule.

3. A party who wishes to dispute a utilization review recommendation of ~~a utilization review managed care vendor~~ first shall exhaust any internal dispute resolution procedures provided by the managed care vendor or the utilization review department. A party who wishes to dispute a final recommendation of a managed care vendor or a prior authorization or preservice review decision under section 92-01-02-34 shall file a written request for binding dispute resolution with the bureau within thirty days after the final recommendation or decision. The request must contain:
  - a. The claimant's name.
  - b. The claim number.
  - c. All relevant medical information and documentation.

- d. A statement of any actual or potential harm to the claimant from the recommendation.
    - e. The specific relief sought.
  4. A party who wishes to dispute a denial or reduction of a service charge arising from bill audit and review must file a written request for binding dispute resolution with the bureau within thirty days after the date of the bureau's remittance advice reducing or denying the charge. The request must contain:
    - a. The claimant's name.
    - b. The claim number.
    - c. The specific code and the date of the service in dispute.
    - d. A statement of the reasons the reduction or denial was incorrect, with any supporting documentation.
    - e. The specific relief sought.
  5. The bureau shall review the request for binding dispute resolution and the relevant information in the record. The bureau may request additional information or documentation. If a party does not provide the requested information within fourteen days, the bureau may decide the dispute on the information in the record.
  6. The bureau may request review by medical service providers, at least one of whom must be licensed or certified in the same profession as the medical service provider whose treatment is being reviewed, or by an external expert in medical coding or other aspects of medical treatment or billing, to assist with its review of the request. The bureau may request an independent medical examination to assist with its review of a request.
  7. At the conclusion of its review, the bureau shall issue its binding decision. The bureau shall issue its decision by letter or notice, or for a decision that is reviewable by law, the bureau may issue its decision in an administrative order instead of a letter or notice.

**History:** Effective January 1, 1994; amended effective April 1, 1997; October 1, 1998; January 1, 2000; May 1, 2002.

**General Authority:** NDCC 65-02-08, 65-02-20

**Law Implemented:** NDCC 65-02-20

**92-01-02-52. Procedure for penalizing delinquent employer accounts.**  
Repealed effective May 1, 2002.

- ~~1. The bureau shall bill annually each employer for premiums as provided by North Dakota Century Code chapter 65-04. If an employer's payroll report is received by the bureau on or before the fifteenth day of the month following the expiration of the employer's payroll period, the first billing statement will be mailed to the employer on or about the last day of the month following the expiration of the payroll period. If an employer's payroll report is received by the bureau after the fifteenth day but not later than the end of the month following the expiration of the employer's payroll period, the first billing statement will be mailed to the employer on or about the fifteenth day of the second month following the expiration of the payroll period. The first billing statement must identify the amount due from the employer and the payment due date. The statement also must explain the quarterly payment option.~~
- ~~2. The payment due date for an employer's account for which a payroll report has been submitted on time is fifteen days after the bureau mails the first billing statement to the employer by regular mail addressed to the last known address of the employer. The payment due date for an employer's account for which a payroll report has not been submitted on time is the fifteenth day of the month following the expiration of the payroll period.~~
- ~~3. If full payment or a quarterly installment payment is not received by the bureau on or before the payment due date, the bureau shall send a second billing statement. This second statement must identify the amount due from the employer and the penalties to which the employer may be subjected under this section and North Dakota Century Code section 65-04-23.~~
- ~~4. On the fifteenth day after the payment due date, the bureau shall assess a penalty of one hundred dollars plus two percent of the amount of premium, penalties, and interest in default.~~
- ~~5. On the thirtieth day after the due date, the bureau shall assess a penalty of one hundred fifty dollars plus two percent of the amount of premium, penalties, and interest in default. At that time the bureau shall notify the employer, by regular mail addressed to the employer's last known address, that the account will be canceled and the employer will be uninsured unless payment is received by the bureau within fifteen days.~~
- ~~6. On the forty-fifth day after the payment due date, the bureau shall cancel the employer's account and shall notify the employer, by regular mail addressed to the employer's last known address, that the employer is uninsured.~~



7. ~~The bureau may extend coverage by written binder if the bureau and the employer have agreed in writing to a payment schedule on a delinquent account, but an employer is not insured if the employer is in default of the agreed payment schedule.~~

**History:** Effective April 1, 1996.

**General Authority:** ~~NDCC 65-02-08~~

**Law Implemented:** ~~NDCC 65-04-23~~

**92-01-02-54. Deductible programs.** The bureau and an employer may contract for a deductible program. When a deductible program contract is entered into, the employer will shall reimburse the bureau for benefits payable on individual claims up to the agreed deductible amount. The bureau shall provide a reduced premium credit to participating employers based on an actuarial analysis of the contracted deductible and the rate classification of the employer.

1. **Eligibility.** Eligibility for participation in a deductible program is based on the financial stability and resources of the employer. Participating employers must be in good standing with the bureau and maintain a risk management program approved by the bureau. However, participating employers are not eligible for any other premium discount offered by the bureau, including the discounts associated with an approved risk management program. Any deductible contract must require the employer to report any work injuries injury to the bureau within ~~forty-eight~~ twenty-four hours of their its occurrence.

The bureau may require participating employers to undergo a financial audit to ensure financial stability. The audit may include a credit check and review of company financial reports.

The bureau shall analyze each proposed contract based on risk analysis and sound business practices. The bureau may refuse any deductible program if it determines that the proposed contract does not represent a sound business practice or decision. Past participation in a deductible program does not guarantee continued eligibility. The bureau may decline renewal of any deductible program.

2. **Claim payment.** The bureau shall process and pay claims in accordance with North Dakota Century Code title 65. The employer shall reimburse the bureau for all costs paid by the bureau on individual claims up to the amount of the contractually agreed deductible.

~~In the event If a third-party recovery on a claim is made, the bureau's subrogation interest must first be applied to the amounts paid on the claim by the bureau in excess of the deductible. Any additional subrogation recovery allowed by law must be applied to reduce the deductible amount by the employer the recovery will be allocated~~

according to the terms of the contractual agreement between the bureau and the employer, subject to North Dakota Century Code section 65-04-19.3. -

The bureau shall deduct any delinquent deductible reimbursements from any subrogation amounts recovered on any claim.

3. **Premium payment.** Premium is due at policy inception pursuant to the terms of the contractual agreement between the bureau and the employer. ~~A deductible contract does not change premium payment requirements or options.~~
4. **Financial security.** The bureau may require an employer to provide security in a form and amount acceptable to the bureau.

~~If the contract provides an aggregate cap payable by an employer for the contract period, the security bond may not exceed the aggregate limit. The bureau may require an employer to provide an initial deposit to offset claims costs up to the deductible amount.~~

**History:** Effective May 1, 2000; amended effective May 1, 2002.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-04-19.3

**92-01-02-56. Retrospective rating program.** The bureau and an employer may elect to contract for a retrospective rating program. Under a retrospective rating program, the employer's retrospective rating premium is calculated using factors including claims costs and actual standard premium and basic premium factors. The bureau shall calculate basic premium factors for each level of premium and maximum employer liability.

Retrospective rating contracts may provide for the calculation of employer or bureau interest credits and debits pertaining to claims payments, deposits, or premium balances.

1. **Eligibility.** Eligibility for participation in a retrospective rating program is based on the financial stability and resources of the employer. Participating employers must be in good standing with the bureau and shall maintain a risk management program approved by the bureau. However, participating employers are not eligible for any other premium discount offered by the bureau, including the discounts associated with an approved risk management program. Any retrospective rating contract must require the employer to report any work injuries injury to the bureau within ~~forty-eight~~ twenty-four hours of ~~their~~ its occurrence.

The bureau may require participating employers to ~~undergo~~ have a financial audit performed to ensure financial stability. The audit may include a credit check and review of company financial reports.

The bureau shall analyze each proposed contract based on risk analysis and sound business practices. The bureau may refuse a retrospective rating program if it is determined that the proposed contract does not represent a sound business practice or decision. Past participation in a retrospective rating program does not guarantee continued eligibility. The bureau may decline renewal of any retrospective rating program.

2. **Retrospective rating program.** A participating employer chooses one maximum liability limit per account. The retrospective rating program applies to the account's entire premium period. The retrospective rating program option is based on aggregate claims costs for all claims for injury or death occurring in the contract year.
3. **Claim payment.** The bureau shall process and pay claims in accordance with North Dakota Century Code title 65. ~~In the event~~ if a third-party recovery on a claim is made, the bureau's subrogation interest must first be applied to the amounts paid on the claim by the bureau. ~~In the event~~ if the subrogation recovery reduces the retrospective premium, the bureau shall provide a refund ~~must be made~~ to the employer.
4. **Premium payment.** Premium is due at policy inception. ~~The selection of a retrospective rating option does not change premium payment requirements or options.~~
5. **Financial security.** The bureau may require an employer to provide security in a form and amount acceptable to the bureau. The amount of the security may not exceed the initial nonpaid portion of the maximum possible retrospective premium.

**History:** Effective May 1, 2000; amended effective May 1, 2002.

**General Authority:** NDCC 65-02-08

**Law Implemented:** NDCC 65-04-17.1

NORTH DAKOTA WORKERS COMPENSATION BUREAU

PERMANENT MENTAL IMPAIRMENT RATING REPORT

WORK SHEET

Since the AMA Guides to the Evaluation of Permanent Impairment Fourth, Fifth Edition, does not provide a quantified method for assigning permanent impairment percentages under Chapter 14, "Mental and Behavioral Disorders", the evaluating physician shall utilize this form. When using this form, the evaluating physician shall:

- a. Become familiar with the content of the work sheet and develop an understanding of the percentages and categories listed in "I. Level of Permanent Mental Impairment" and the ~~corresponding category definitions presented in "III. Category Definition Guidelines" found on Page 3 Table 14-1 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition;~~
- b. Enter the permanent mental category rating associated with each item in all sections of "II. Areas of Function" as it applies to the injured worker; and
- c. Enter a rating for the "Overall Permanent Impairment Rating" provided ~~on Page 2 within this appendix.~~ The "Overall Permanent Impairment Rating" must be based upon the categories provided ~~on the attached "III. Category Definition Guidelines in Table 14-1.~~
- d. All permanent impairment reports must include the cause of the impairment and must contain an apportionment if the impairment is caused by both work and non-work injuries or conditions.

**The various degrees of permanent impairment from "II. Areas of Function" ~~on page 2 within this appendix~~ are not added, combined, or averaged. The overall mental rating should be based upon clinical judgment and the ~~"category definitions" on the attachment to this form Table 14-1,~~ and be consistent with other chapters of the AMA guides.**

--PLEASE PHOTOCOPY AS NEEDED--

PERMANENT MENTAL IMPAIRMENT RATING

REPORT WORK SHEET

Patient Name \_\_\_\_\_ DOB \_\_\_\_\_

WC# \_\_\_\_\_ SSN \_\_\_\_\_

I. LEVELS OF PERMANENT MENTAL IMPAIRMENT - as identified in Table 14-1 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition:

<u>Percent</u>	<u>Category</u>
0%	0- No. Permanent <u>Class 1. No</u> Impairment
<del>1-5%</del> <u>1-15%</u>	<del>1- Minimal</del> <u>Class 2. Mild</u> Permanent Impairment
<del>6-15%</del> <u>16-25%</u>	<del>2- Mild</del> <u>Class 3. Moderate</u> Permanent Impairment
<del>16-25%</del> <u>26-50%</u>	<del>3- Moderate</del> <u>Class 4. Marked</u> Permanent Impairment
<del>26-50%</del>	<del>4- Marked</del> Permanent Impairment
<del>51-75%</del>	<del>5- Extreme</del> Permanent Impairment
<del>76-100%</del> <u>51-100%</u>	<del>6- Maximum</del> <u>Class 5. Extreme</u> Permanent Impairment

II. AREAS OF FUNCTION

1. Activities of Daily Living

- \_\_\_\_\_ ~~Self-care and personal~~ hygiene (urinating, defecating, brushing teeth, combing hair, dressing oneself, bathing, eating, cooking preparing meals, and feeding oneself)
- \_\_\_\_\_ ~~Communication~~ (writing, typing, seeing, hearing, speaking)
- \_\_\_\_\_ ~~Normal living postures/ambulation~~ Physical activity (standing, sitting, lying, reclining, walking, climbing stairs)
- \_\_\_\_\_ ~~Travel~~ (driving, riding, flying)
- \_\_\_\_\_ ~~Nonspecialized hand activities~~ (grasping, lifting, tactile discrimination)
- \_\_\_\_\_ ~~Sexual function~~ (participating in usual sexual activities orgasm, ejaculation, lubrication, erection)
- \_\_\_\_\_ ~~Sleep~~ (restful, nocturnal sleep patterns pattern)
- \_\_\_\_\_ ~~Social and recreational activities~~ (consider pre-injury activities of the patient)

2. Social Functioning

- \_\_\_\_\_ ~~Get along with others without behavior extremes~~

- \_\_\_\_\_ ~~Initiate social contacts, negotiate and compromise~~
- \_\_\_\_\_ ~~Communicate clearly and effectively with others~~
- \_\_\_\_\_ ~~Interact and actively participate in group activities~~
- \_\_\_\_\_ Cooperative behavior, consideration for others, and awareness of others' sensitivities
- \_\_\_\_\_ Interacts appropriately with the general public
- \_\_\_\_\_ Asks simple questions or requests assistance
- \_\_\_\_\_ Accepts instructions and responds appropriately to criticism from supervisors
- \_\_\_\_\_ Gets along with coworkers and peers without distracting them or exhibiting behavioral extremes
- \_\_\_\_\_ Maintains socially appropriate behavior
- \_\_\_\_\_ Adheres to basic standards of neatness and cleanliness

### 3. Thinking Memory, Concentration, Persistence, and Pace

- \_\_\_\_\_ ~~Comprehend/follow simple commands~~
- \_\_\_\_\_ Works with or near others without being distracted
- \_\_\_\_\_ ~~Apply common sense to carry out a task~~
- \_\_\_\_\_ ~~Ask simple questions, request assistance when needed~~
- \_\_\_\_\_ ~~Perform simple, routine, repetitive tasks~~
- \_\_\_\_\_ Sustains an ordinary routine without special supervision
- \_\_\_\_\_ ~~Ability to abstract or understand concepts~~ carry out detailed instructions
- \_\_\_\_\_ ~~Maintain attention; and concentration on a for specific task and complete in a timely manner~~ tasks
- \_\_\_\_\_ ~~Memory, immediate and remote~~
- \_\_\_\_\_ ~~Judgement~~
- \_\_\_\_\_ ~~Problem solving and conceptual reasoning ability~~ Makes simple work-related decisions
- \_\_\_\_\_ ~~Perform daily tasks (including work) performed prior to the injury or illness at a reasonable pace~~
- \_\_\_\_\_ ~~Ability to initiate decisions and perform planned action~~ Performs activities within a given schedule

- \_\_\_\_\_ Maintains regular attendance and is punctual within customary tolerances
- \_\_\_\_\_ Completes a normal workday and workweek without interruptions from psychologically based symptoms
- \_\_\_\_\_ Maintains regular attendance and is punctual within customary tolerances

**4. Deterioration or Decompensation in Complex or Worklife Settings  
(Adaptation to Stress Stressful Circumstances)**

- \_\_\_\_\_ Perform activities on schedule, be punctual
- \_\_\_\_\_ Adapt to limits or standards
- \_\_\_\_\_ Manage conflicts with others -- negotiate, compromise
- \_\_\_\_\_ Set realistic goals, has good autonomous judgement
- \_\_\_\_\_ Withdraws from the situation or experiences exacerbation of signs and symptoms of a mental disorder
- \_\_\_\_\_ Decompensates and has difficulty maintaining performance of activities of daily living (ADLs), continuing social relationships, or completing tasks
- \_\_\_\_\_ Able to make good autonomous decisions/exercises good judgment
- \_\_\_\_\_ Perform activities on schedule
- \_\_\_\_\_ Interacts appropriately with supervisors and peers
- \_\_\_\_\_ Responds appropriately to changes in work setting
- \_\_\_\_\_ Aware of normal hazards and takes appropriate precautions
- \_\_\_\_\_ Able to use public transportation and can travel to and within unfamiliar places
- \_\_\_\_\_ Sets realistic goals
- \_\_\_\_\_ Makes plans independent of others

**OVERALL PERMANENT IMPAIRMENT RATING:** \_\_\_\_\_

**IMPAIRMENT CAUSED BY WORK:** \_\_\_\_\_

**Physician:** \_\_\_\_\_ **Date:** \_\_\_\_\_

(signature)

**PERMANENT WORK-RELATED MENTAL IMPAIRMENT RATING**

## REPORT WORK SHEET

### III. ~~CATEGORY DEFINITION GUIDELINES~~

#### ~~CATEGORY 0: 0% - No Permanent Impairment:~~

~~Mental symptoms arising from the work-related injury have been absent for the past month. ADLs are not affected. Functioning is good in social and work activities in all areas, generally satisfied with life, no more than everyday problems:~~

~~**Examples:** mild anxiety related to specific situations; occasional arguments with family members.~~

#### ~~CATEGORY 1: 1-5% - Minimal Category of Permanent Impairment:~~

~~Mental Symptoms, arising from the work-related injury and not likely to remit despite medical treatment, minimally impair functioning. ADLs are only minimally affected. Functioning is minimally impaired in social or work settings:~~

~~**Examples:** temporary falling behind in work as a result of symptoms with little or no conflict with co-workers or peers. Activities of daily living are only minimally affected.~~

#### ~~CATEGORY 2: 6-15% - Mild Category of Permanent Impairment:~~

~~Mental symptoms, arising from the work-related injury and not likely to remit despite medical treatment, and mildly impairing. ADLs are mildly disrupted. Functioning shows mild permanent impairment in social or work activities. Permanent impairment is compatible with most useful functions:~~

~~**Examples:** occasionally misses work or reduced efficiency as a result of one or more symptoms; mild, intermittent conflicts with co-workers or peers; depressed mood, mild insomnia, generally functioning pretty well, has some meaningful interpersonal relationships:~~

#### ~~CATEGORY 3: 16-25% - Moderate Category of Permanent Impairment:~~

~~Mental symptoms, arising from the work-related injury and not likely to remit despite medical treatment, are moderately impairing. ADLs are moderately disrupted. Functioning shows moderate permanent impairment. Activities sometimes need direction or supervision:~~



~~**Examples:** frequent conflicts with co-workers or frequently misses work as a result of one or more symptoms; difficulties in interpersonal relationships, has few friends.~~

**~~CATEGORY 4: 26-50% - Marked Category of Permanent Impairment~~**

~~Mental symptoms, arising from the work related injury and not likely to remit despite medical treatment, are seriously impairing. ADLs are seriously disrupted. Functioning shows serious difficulties in social or work activities.~~

~~**Examples:** disorganized thinking, frequent suicidal ideations, cognitive deficits, usually unable to keep a full-time job without direction or supervision; work setting requires significant structure due to the multiple symptoms.~~

**~~CATEGORY 5: 51-75% - Extreme Category of Permanent Impairment~~**

~~Mental symptoms, arising from the work related injury and not likely to remit despite medical treatment, are incapacitating. At times, ADLs require structuring. Functioning is quite poor, unsafe in work settings, at times requires hospitalization or fulltime supervision. Most activities require directed care.~~

~~**Examples:** include moderate to severe dementia, bizarre and inappropriate behavior; significantly socially isolated.~~

**~~CATEGORY 6: 76-100% - Maximum Category of Permanent Impairment~~**

~~This impairment level precludes useful functioning in all areas. These individuals are generally appropriate for institutionalized settings, if available. All activities require directed care.~~

~~**Examples:** organic brain disorder from a close head injury with intractable psychotic symptoms.~~



**TITLE 96**  
**BOARD OF CLINICAL LABORATORY PRACTICE**



MAY 2002

CHAPTER 96-01-01

**96-01-01-01. Organization of the board of clinical laboratory practice.**

1. **History and function.** The 1989 legislative assembly passed legislation to license clinical laboratory personnel, codified as North Dakota Century Code chapter 43-48.

This chapter requires the governor to appoint a state board of clinical laboratory practice. It is the responsibility of this board to license laboratory personnel.

2. **Board membership.** ~~The board consists of six members appointed by the governor for a term of three years:~~
  - a. ~~One physician chosen from a list of at least three qualified physicians recommended by the North Dakota pathology organization.~~
  - b. ~~The following laboratory persons chosen from a list of at least three qualified persons for each vacancy submitted by the North Dakota society for medical technology or other interested parties:~~
    - (1) ~~One administrative nonphysician clinical laboratory director;~~
    - (2) ~~One clinical laboratory scientist; and~~
    - (3) ~~One clinical laboratory technician.~~
  - c. ~~Two consumer members, each of whom must be a citizen of the United States, a resident of North Dakota for at least two years before the date of appointment, and a current resident of North Dakota.~~

~~d. The state health officer or state health officer's designee is an ex officio member of this board.~~

~~Terms of board members must be staggered. **Officers.** Officers must be elected by the board. Officers will consist of a chair, secretary, and treasurer.~~

- ~~3. **Meetings.** The board shall meet at least once during the first three months of each calendar year and at least one additional meeting must be held before the end of each calendar year. Other meetings may be convened at the call of the board chairperson or the written request of any three board members.~~
- ~~4. **Compensation.** In addition to the expenses incurred while engaged in the performance of their duties, each board member shall receive a per diem fee set by the board, not to exceed the fee established by law for the legislative assembly.~~
- ~~5: 4. **Staff.** The board is authorized to employ an executive director and such other professional and secretarial staff as may be necessary.~~
- ~~6: 5. **Inquiries.** Inquiries regarding the board may be addressed to:~~

Board of Clinical Laboratory Practice  
University of North Dakota  
P.O. Box 7189 4103  
Grand Forks, ND 58202-7189 Bismarck, ND 58502-4103

**History:** Effective June 1, 1991; amended effective April 1, 1994; May 1, 2002.

**General Authority:** NDCC 28-32-02.1, 43-48-04

**Law Implemented:** NDCC ~~43-48-04~~ 28-32-02

**CHAPTER 96-02-01  
DEFINITIONS**

[Repealed effective May 1, 2002]

## CHAPTER 96-02-02

**96-02-02-01. General registration license requirements.** The following requirements apply to all applicants seeking licensure by the board:

1. A completed application form.
2. Payment of the appropriate application fee as set by the board.
3. Evidence of the required education and that the applicant is credentialed by has passed a national certifying agency examination approved by the board ~~or evidence of graduation from a curricula approved by the board.~~
4. All applications must be signed and notarized.

**History:** Effective June 1, 1991; amended effective May 1, 2002.

**General Authority:** NDCC 43-48-04

**Law Implemented:** NDCC 43-48-04, 43-48-06, 43-48-07, 43-48-08, 43-48-09, 43-48-13

### **96-02-02-02. Types of registration Requirements for specific licenses.**

1. Medical technologist (clinical laboratory scientist) ~~has graduated with~~ must have a bachelor of science or a bachelor of arts degree in a science-related discipline and ~~has have~~ passed a national certifying examination approved by the board. ~~Upon receipt of documentation that all necessary educational qualifications for a medical technologist have been met, or upon successful completion of an examination approved by the board, the board shall issue a clinical medical technologist license to any person meeting the above qualifications:~~
2. A clinical laboratory specialist ~~is educated~~ must have a baccalaureate or higher degree with a major in one of the chemical, physical, or biological science sciences and ~~performs in a clinical laboratory only~~ may only perform functions directly related to such the person's particular specialty. ~~Upon successful completion of an examination covering only those fields in which an applicant is eligible to be examined, and documentation of competency by a nationally recognized certifying agency, the board shall issue a clinical laboratory specialist license to any person meeting the following minimum qualifications:~~
  - a: ~~A baccalaureate or higher degree with a major in one of the chemical, physical, or biological sciences:~~
  - b: ~~Certification resulting from passing a national certifying examination in a specialty area:~~



A clinical laboratory specialist must pass a national certifying examination approved by the board in a specialty area. A license is issued as to a clinical laboratory specialist followed by designation of will designate the area of specialty.

3. A clinical laboratory technician ~~has~~ must successfully completed complete the academic requirements of a structured clinical educational program recognized by the board and ~~has passed~~ must pass a national certifying examination approved by the board.
4. The board ~~shall~~ may issue a provisional permit to a person who has applied for ~~registration~~ licensure and is eligible to take a board-recognized national certifying examination.

The provisional permit may not exceed one year. At the board's discretion, the permit may be renewed ~~only once for a period of six months.~~

~~When all requirements have been met, an official registration shall be issued giving the registrant a permanent registration number.~~

**History:** Effective June 1, 1991; amended effective May 1, 2002.

**General Authority:** NDCC 43-48-04

**Law Implemented:** NDCC 43-48-04, 43-48-07, 43-48-08, 43-48-09, 43-48-11

**96-02-02-03. Reciprocity.** The board will evaluate the submission of requests for reciprocity for licensure on an individual basis and grant such only upon a finding that the requirements for licensure in another state or jurisdiction are equal to or more stringent than those of North Dakota and that the applicant's license in another state or jurisdiction is in good standing.

**History:** Effective June 1, 1991; amended effective May 1, 2002.

**General Authority:** NDCC 43-48-04

**Law Implemented:** NDCC 43-48-04

**96-02-02-04. Licensure License renewal - Licenses are renewable biennially.**

1. Applications for renewal of license will be mailed by the board in May of even-numbered years to all licenseholders. Fees are payable to the board on or before the first of July of the renewal year.
2. Proof of the required ~~continued~~ continuing education is within the prior licensing period must be submitted with renewals.

3. If a registrant licensee fails to receive the renewal notice, it is the responsibility of the registrant licensee to contact the board before the first of July deadline.
4. License fees are considered delinquent and a late charge is assessed if the renewal application is not postmarked received by the board office on or before the first of July of the renewal year.
5. Licenses will ~~be revoked~~ expire if the renewal form and fees are not received within ninety days from the first of July of the renewal year. ~~To reapply for licensure, an applicant must submit:~~
  - a. ~~An application form.~~
  - b. ~~The initial license fee -- not the renewal fee.~~
  - c. ~~Late charges as assessed by the board.~~
  - d. ~~Proof of continued education.~~

~~Revoked licenses will not be reissued to those licensed under the grandfather provision.~~

6. If a person's license, including one issued pursuant to the grandfather provisions of North Dakota Century Code section 43-48-12, expires, the person must make application for a license in accordance with section 96-02-02-01 and meet the requirements of section 96-02-02-02.

**History:** Effective June 1, 1991; amended effective May 1, 2002.

**General Authority:** NDCC 43-48-04

**Law Implemented:** NDCC 43-48-04, 43-48-06, 43-48-14

**96-02-02-05. Registration refused, revoked, or suspended.** Repealed effective May 1, 2002. ~~The board may refuse, suspend, or revoke a registration on the grounds stated in North Dakota Century Code section 43-48-15.~~

~~**History:** Effective June 1, 1991.~~

~~**General Authority:** NDCC 43-48-04~~

~~**Law Implemented:** NDCC 43-48-04, 43-48-11, 43-48-15~~

**96-02-02-06. Inactive status.** Repealed effective May 1, 2002. ~~Upon request, the board shall grant inactive status to a licensee who (a) does not practice as a laboratory professional, and (b) maintains any continuing competency requirements established by the board. The board may establish additional requirements for license renewal which provide evidence of continuing competency.~~

~~Inactive status is only granted to an individual who has held a license previously and who provides a written request for inactive status. No fee will be charged for inactive status.~~

~~To apply for reinstatement of active status, the applicant must provide a copy of previous license, the renewal fee, and must meet any other reentry requirements established by the board.~~

~~The maximum time to be carried on inactive status is four years.~~

**History:** Effective June 1, 1991.

**General Authority:** ~~NDCC 43-48-04~~

**Law Implemented:** ~~NDCC 43-48-04~~

**CHAPTER 96-02-03**

**96-02-03-01. Fees.** The board shall set fees in such an amount as to reimburse the operational cost of licensure services rendered.

		<u>2002</u>	<u>2004</u>	<u>2006 and thereafter</u>
1. <del>Application</del> <u>Initial license fee</u>				
Category MT (CLS) and Specialists	<del>\$45.00</del>	<u>\$70.00</u>	<u>\$80.00</u>	<u>\$90.00</u>
Category CLT, MLT	<del>\$35.00</del>	<u>\$50.00</u>	<u>\$60.00</u>	<u>\$70.00</u>
2. Biennial renewal fee				
Category MT (CLS) and Specialists	<del>\$30.00</del>	<u>\$60.00</u>	<u>\$70.00</u>	<u>\$80.00</u>
Category CLT, MLT	<del>\$20.00</del>	<u>\$40.00</u>	<u>\$50.00</u>	<u>\$60.00</u>
3. Late fees <del>-\$5.00 per month</del>		<u>\$50.00</u>		
4. Duplicate license fee	<del>\$10.00</del>			

**History:** Effective June 1, 1991; amended effective May 1, 2002.

**General Authority:** NDCC 43-48-04, 43-48-06

**Law Implemented:** NDCC 43-48-04, 43-48-06

## CHAPTER 96-02-04

### 96-02-04-01. Continuing education.

1. ~~To renew a license a person must present proof of having attained at least two continuing education units of continuing education in the field of laboratory medicine. Continuing education for licensure renewal must be completed in the biennium preceding the biennium for which licensure is sought. A clinical laboratory practitioner licensed in North Dakota must complete twenty continuing education contact hours for the two-year licensing period to maintain licensure in North Dakota.~~
  - a. Twenty continuing education hours are required if licensed after June thirtieth of the even-numbered year and before July first of the odd-numbered year.
  - b. Ten continuing education hours are required if licensed after June thirtieth and on or before December thirty-first of the odd-numbered year.
  - c. No continuing education hours are required if licensed on or after January first of an even-numbered year.
2. ~~One tenth continuing education units is one contact hour. Board-approved continuing education must be directly related to or supportive of clinical laboratory practice. Continuing education includes:~~
  - a. Workshops, refresher courses, professional conferences, seminars, and educational programs presented by providers approved by the board.
  - b. Presentations by licensee:
    - (1) Professional presentations, e.g., workshops, institutes. A presentation may be counted only one time and there is no limit on hours that may be earned under this paragraph.
    - (2) Community or service organization presentations. A general public presentation may be counted only one time and no more than three hours may be earned under this paragraph.
  - c. Formal academic coursework. One credit hour class is equal to ten contact hours.
  - d. Formal self-study course with a completion certificate, and there is no limit on hours under this subdivision.

- e. Research approved by the board.
  - f. Supervised clinical practice approved by the board.
  - g. Facility-based continuing education program. No more than sixty percent of the required hours may be earned under this subdivision.
3. Twelve hours of the required twenty per biennium can be accrued within the employment facility; eight hours are required to be external. External programs are open to the medical community. Nonacceptable continuing education topics include courses in general safety not directly related to clinical laboratory practice, annual training required by a medical facility such as cardiopulmonary resuscitation or first aid, breath alcohol instrument training, personal reading of professional journals, committee meetings, computer classes, personal enrichment courses, and programs delivered through the mass media.
  4. Applicants who take the national exam will have the continuing education requirements waived for that licensure period. The board requires verification of continuing education completion, which must be received by the board office on or before the licensure expiration date. Verification must include name of licensee; dates of attendance; title of program, course, or workshop; sponsor's name and address; and number of earned contact hours. Verification documentation must be submitted on a board-approved continuing education record form and include a copy of a continuing education certificate signed by the provider or sponsor.
  5. A curriculum review committee, composed of the advisory board members or their agent, shall meet at timely intervals to review applications for curriculum accreditation for external continuing education. Continuing education units must be assigned as one continuing education unit per ten hours of instruction. Curricula must have laboratory orientation. Failure to meet the continuing education requirements by the deadline will result in nonrenewal of license.
  6. The board may waive requirements or allow exceptions due to extraordinary circumstances.

**History:** Effective June 1, 1991; amended effective May 1, 2002.

**General Authority:** NDCC 43-48-04

**Law Implemented:** NDCC 43-48-04

## CHAPTER 96-02-05

**96-02-05-01. ~~Address and home~~ Name and address changes.** Any licensee must promptly report a change of ~~address, home, or educational degree name or address~~ to the board in writing. ~~Proof of any educational degree change must also be submitted.~~

**History:** Effective June 1, 1991; amended effective May 1, 2002.

**General Authority:** NDCC 43-48-04

**Law Implemented:** NDCC 43-48-04

**CHAPTER 96-02-06  
VIOLATIONS**

[Repealed effective May 1, 2002]



**CHAPTER 96-02-07  
GRIEVANCES**

[Repealed effective May 1, 2002]

**CHAPTER 96-02-08  
BOARD ACTION**

[Repealed effective May 1, 2002]

**CHAPTER 96-02-09**  
**DISCIPLINE**

Section  
96-02-09-01                      Disciplinary Procedure

**96-02-09-01. Disciplinary procedure.**

1. Upon filing of a written and signed complaint alleging a licensee engaged in conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-48-15, the board shall notify the licensee of the complaint and require a written response from the licensee.
2. The board may direct a board member to investigate the complaint. After completing the investigation, the board member will recommend whether the board should take disciplinary action against the licensee.
3. The board shall determine if there is a reasonable basis to believe the licensee engaged in conduct identified as grounds for disciplinary action under North Dakota Century Code section 43-48-15. If the board determines there is not a reasonable basis to believe, the board will notify the complainant and the licensee. If the board determines there is a reasonable basis to believe, the board will proceed with a disciplinary action in accordance with North Dakota Century Code chapter 28-32.
4. The board may, at any time, offer or accept a proposal for informal resolution of the complaint or disciplinary action.

**History:** Effective May 1, 2002.  
**General Authority:** NDCC 43-48-04  
**Law Implemented:** NDCC 43-48-15



**TITLE 99**  
**STATE GAMING COMMISSION**



**JULY 2002**

**CHAPTER 99-01.3-01**

**99-01.3-01-01. Ineligible organizations.** An organization or a closely related organization is ineligible for a license or ~~local~~ permit if either organization has failed to resolve an imbalance involving its gaming or trust account according to section 99-01.3-03-05, either organization has deals or games with state gaming stamps that are not accounted for, it is delinquent in paying any tax, interest, penalty, or monetary fine due, or either organization was convicted of violating this article or North Dakota Century Code chapter 12.1-28 or 53-06.1. An auxiliary that is not a closely related organization is eligible for a ~~local~~ permit. An organization that is first licensed or first issued a permit on or after July 1, 2002, must have its principal executive office in North Dakota. Except for an educational organization, a county, city, state, political subdivision, or federal entity is not eligible for a license or ~~local~~ permit. A nonprofit social, hobby, trade, business, professional, similar club or association, or organization whose primary purpose mainly provides a direct benefit to its officers, is not a public-spirited organization eligible for a license.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01, 53-06.1-01.1

**99-01.3-01-02. Site authorization.**

1. An eligible organization shall obtain a site authorization for a site within a city or county from the governing body of that city or county. A separate site authorization is required for each site. A site authorization is issued by a governing body and approved by the attorney general. It may be issued for a site located on public or private property and may be restricted or conditional. Restrictions may include types of games, days of the week, and designation of an area at a site where games will be conducted. An organization shall comply with a restriction of a site authorization until an amended site authorization is issued by a governing body and approved by the attorney general. A site authorization must describe the gaming area designated by an organization that restricts

where games may only be conducted and played. No restroom may be part of the gaming area. A governing body may revoke or suspend a site authorization based on good cause.

2. A governing body may issue a site authorization to two or more organizations to conduct games at the same site if the site authorizations restrict the organizations to different days of the week. However, more than one organization may be issued a site authorization for a fairground or similar open space of land.
3. For an initial application for a site authorization for an organization that desires to be recognized as a public-spirited organization, a governing body of a city or county shall determine whether the organization qualifies by examining:
  - a. A copy of an organization's articles of incorporation, charter, bylaws, or similar document to determine its primary purpose and date of origin; and
  - b. A copy of an organization's statements of revenues and expenses for the two preceding years to determine whether the primary purpose has been achieved within this state for both years. A governing body shall examine a copy of the minutes of a board of director's meeting which must include a resolution that states the intended use of net proceeds. An organization's financial officer or president shall attest to the accuracy of this information.
4. ~~If a special~~ An organization may temporarily use more twenty-one tables at a site than a site authorization allows for up to fourteen days per special event provided that the event as determined is recognized by a local governing body is held which does not exceed fourteen days, if no more than two events are held per quarter, if written approval is granted by a local governing body, and if the monthly rent amount does not increase, an organization may temporarily use more twenty-one tables at a site than a site authorization allows. A special event is an infrequent, significant, and identifiable activity in the community. The site authorization does not need to be amended, regardless of where the tables are placed.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-03

#### **99-01.3-01-03. License.**

1. An organization may not conduct games at a site unless the attorney general first approves a site authorization ~~is approved by the attorney~~



general and it receives from the attorney general a license for that city or county. A separate license is required for each city or county. If the attorney general determines that an organization's actual primary purpose does not qualify it as an eligible organization, the attorney general shall deny the application or revoke the license.

2. An application must include information prescribed by the attorney general and is subject to approval by the attorney general. A license is effective for one year beginning July first and ending June thirtieth. If an organization plans to conduct a raffle on or after July first, a license cannot be issued before January first. If an organization received a charity local permit during the fiscal year, it may not receive a state license.
3. An When an organization that is first licensed may not applies for a license to conduct any a game, the license may not be issued to the organization until after the its gaming manager satisfactorily demonstrates to the attorney general that the organization is capable of properly managing and controlling the game to be conducted that it intends to conduct.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-03

**99-01.3-01-04. Reporting a change in information.** If information on a site authorization or license application ~~that is filed with the attorney general~~ becomes inaccurate or outdated in a material way, including a change in an organization's primary purpose ~~or articles of incorporation, an the organization, distributor, or manufacturer~~ shall provide the attorney general, in writing, items of change ~~and a copy of any new documents~~ within fourteen days following the change.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-01-05. Local permit Permits.**

1. A ~~local~~ permit is issued by a city or county governing body ~~it and~~ and may be issued for a site located on public or private property ~~and. It may be restricted. Restrictions may include, including~~ types of games, days of the week, and designation of an area at a site where games will be conducted. A governing body may revoke or suspend a ~~local~~ permit based on good cause.
2. A ~~local~~ permit is required for each site at which games have been authorized. An organization may be issued two or more local permits

~~at the same time; however, the award of. The total cash prizes, in the aggregate for raffles, bingo, and sports pools; may not exceed three thousand dollars per day or six thousand dollars per year. No single cash or merchandise prize can exceed one thousand dollars. A donated merchandise prize is valued at its retail price when it is acquired.~~

3. When a governing body issues a ~~local~~ permit, it shall assign a ~~local~~ permit number, specify the day or period for which it is effective, and send a copy of it to the attorney general within fourteen days from when it was issued. An organization that has a license may not at the same time have a ~~local~~ permit.
4. An organization may receive one or more local permits to conduct a raffle, bingo, raffles, and or sports pools pool from a city or county governing body during a fiscal year July first to June thirtieth. However, for a calendar year raffle, a local permit may be issued for a calendar year January first to December thirty-first. If an organization plans to conduct a raffle on or after July first, a local permit cannot be issued before January first. ~~The maximum primary merchandise and cash prizes must be according to the gaming law. A donated merchandise prize is valued at its retail price when it is acquired.~~
5. An organization may receive one charity local permit to conduct a raffle, bingo, sports pool, paddlewheels, twenty-one, or poker from a city or county governing board during a fiscal year July first to June thirtieth. If the organization has received a local permit or license during the fiscal year, it may not receive a charity local permit. If the organization received a charity local permit during the fiscal year, it may not receive a local permit. The organization shall file a report on the event of a charity local permit with the attorney general and governing body within thirty days of the event.
6. For bingo, an organization shall comply with section 99-01.3-04-01 through, 99-01.3-04-02, and 99-01.3-04-03. For a raffle, an organization shall comply with sections 99-01.3-05-01 through 99-01.3-05-05. For a sports pool, an organization shall comply with section 99-01.3-07-01. For twenty-one, an organization shall comply with sections 99-01.3-08-02, 99-01.3-08-09, 99-01.3-08-10, and 99-01.3-08-11. For poker, an organization shall comply with section 99-01.3-09-01. For paddlewheels, an organization shall comply with section 99-01.3-11-01.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-03, 53-06.1-06

## CHAPTER 99-01.3-02

### 99-01.3-02-01. Definitions. As used in this article:

1. "Attorney general" includes an agent of the attorney general.
2. "Bar" means retail alcoholic beverage establishment.
3. "Bar employee" is a person, employed by a bar that is not operated by an organization, who redeems winning pull tabs or bingo cards, or both, involving a dispensing device or who sells raffle tickets for an organization.
4. "Cash on hand" means coin, currency, and checks, plus an IOU due from another source of cash or nongaming funds, less an IOU owed to another source of cash or nongaming funds.
5. "Cash prize" means coin, currency, marketable security, and a similar item that can be readily redeemed or converted into legal tender. Cash prize does not include precious metal bullion, a coin of precious metal or antique coin that has a market value greater than its face value, or a merchandise gift certificate. The value of a marketable security is its cost.
6. "Cash profit" means:
  - a. For bingo, excluding a dispensing device, total ending cash on hand, less starting cash on hand and prizes paid by check, for a bingo session.
  - b. For a raffle, total receipts less prizes paid by cash and check.
  - c. For a commingled game of pull tabs, total ending cash on hand, less starting cash on hand and cash prizes paid by check, for a day's activity.
  - d. For a commingled game of pull tabs and bingo involving a dispensing device, total currency withdrawn from a dispensing device, less the value of daubers sold, credits paid on a credit redemption register, cash long or short from an employee bank, and prizes paid, for an interim period.
  - e. For a club special, tip board, seal board, and punchboard, the total daily difference between ending cash on hand and starting cash on hand and less prizes paid by check, for the game.

- f. For a coin prize board, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check and cost-of coins, for the game.
  - g. For a sports pool, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check.
  - h. For twenty-one, and paddlewheels described by subsection 2 of section 99-01.3-11-01, total ending cash on hand, plus drop box cash, less total starting cash on hand, for a day's activity.
  - i. For poker, total ending cash on hand, less starting cash on hand, for a day's activity.
  - j. For calcuttas, total ending cash on hand, less starting cash on hand, prizes paid by check, and refunds to players, for the event.
  - k. For paddlewheels described by subsection 1 of section 99-01.3-11-01, total ending cash on hand, less starting cash on hand and prizes paid by check, for a paddlewheel ticket card.
  - ~~l. For paddlewheels described by subsection 2 of section 99-01.3-11-01, total ending cash on hand, plus drop box cash, less starting cash on hand, for a day's activity.~~
7. "Conduct of games" means the direct operation of a game on a site, including placing pull tabs or bingo cards in or withdrawing currency from a dispensing device. This term excludes a bar employee who redeems a winning pull tab or bingo card, or both, involving a dispensing device or who sells a raffle ticket.
8. "Deal" in pull tabs means each box or bag or series of boxes or bags containing one game with the same serial number. "Deal" in bingo means each box of bingo cards, regardless of the serial number.
9. "Employee" includes a person employed by an organization, an employee of a temporary employment agency who provides services to an organization, and a volunteer of an organization.
10. "Flare" refers to a flare, master flare, or prize flare:
- a. Flare. A flare is a display with the state gaming stamp affixed which describes a punchboard, sports-pool board, calcutta board, deal of pull tabs, club special, tip board, coin prize board, seal board, and deal of bingo cards involving a dispensing device. The flare for a punchboard is its face sheet. A flare for a sports-pool board, calcutta

board, ~~coin~~ prize board, club special, tip board, and seal board is the game board.

- b. Master flare. A master flare for a game of pull tabs is the same as a "flare" but it does not have a state gaming stamp affixed. A master flare for paddlewheels is described by subsection 1 of section 99-01.3-11-02.
  - c. Prize flare. A prize flare is a posted display which describes a winning bingo pattern and prize amount involving bingo cards used in a dispensing device.
11. "Gaming equipment" means a game piece or device specifically designed for use in conducting games, including integral components of a dispensing device such as a currency validator, processing board, and EPROM microchip or other data storage device. The term excludes fill and credit slips, promotional paper bingo cards, and a bingo dauber.
12. "Inside information" is any information about the status of a game when that game is conducted that may give a person an advantage over another person who does not have that information, regardless if the person uses or does not use the information, when providing that information is prohibited by the gaming law or rules. It includes information provided through written, verbal, or nonverbal communications that implies or expresses the number of unsold chances; relationship of a game's cash on hand to its ideal adjusted gross proceeds; number of unredeemed top tier or minor winning game pieces that is not posted, value of a hole card in twenty-one, number under the tape of a sports-pool board, or number under a seal.
13. "Organization" in reference to a local permit includes a "group of people".
14. "Permit" means a local permit or charity local permit.
15. "Primary game" is the principal game conducted on a site. Determining factors include frequency of conduct, square footage used, duration of time conducted, and volume of activity.
- ~~15-~~ 16. "Volunteer" means a person who conducts games for no compensation. A volunteer may receive a gift not exceeding a total retail value of fifteen dollars for a consecutive twenty-four-hour period, cash tips, and reimbursement for documented business expenses. No gift may be cash or convertible into cash. See definition of employee.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-02-02. Record check.**

1. Unless a person is not required to have a record check according to subsection 4, an organization or distributor may not employ the person as ~~an~~ a temporary or permanent "employee" until the organization or distributor has initiated a record check on the person, or the person has independently requested a record check from the bureau of criminal investigation within one year ~~prior to~~ before employment. However, an organization or distributor may temporarily employ a person pending a record check.
2. An organization or distributor shall initiate a record check of a person by submitting a "request for record check" form to the attorney general ~~within fourteen days from~~ before or when the person begins temporary employment. If the attorney general determines that a fingerprint card or special authorization form, or both, are necessary, the attorney general shall provide this card or form, or both, to an organization or distributor which shall submit the card or form, or both, to the attorney general within ten days from when the card or form, or both, were received. An organization or distributor may only request a record check of a person who has a written promise of employment or who is temporarily employed pending the result of the record check. A person shall attest to the accuracy of the information on the form and authorize the attorney general to release information on any criminal record found, including a copy of the bureau of criminal investigation's criminal history record information, to an organization or distributor which requested the record check.
3. For the purpose of this section, the definition of an "employee" is:
  - a. A person who directly operates games on a site;
  - b. A person who is a shift or gaming manager;
  - c. A person who is employed by a bar that is not operated by an organization, and who is authorized by an organization under subsection 4 of section 99-01.3-12-02 to withdraw currency or a drop box from a pull tab or bingo card dispensing device;
  - d. A person who places a deal of pull tabs or bingo cards in a dispensing device, removes currency from the device, or reimburses a bar for redeemed pull tabs or bingo cards;
  - e. A person who is a member of a ~~twenty-one~~ drop box cash count team; or

- f. A person who directly sells or distributes gaming equipment for a distributor.
4. These employees of an organization are not required to have a record check:
    - a. A volunteer, except a gaming manager or person who is a member of a drop box cash count team;
    - b. An employee who is sixteen or seventeen years of age;
    - c. An employee who has an expired work permit and who continues to be employed by the same organization or distributor that the person was employed by when the work permit expired;
    - d. An employee who has had a record check done and, within one year of the record check, has become reemployed by the same organization or employed by a different organization, distributor, or bar than the person was employed by when the record check was done, and who provides the notification copy of a "request for record check" form and, if applicable, a copy of the bureau of criminal investigation's criminal history record information, to the new employing organization, distributor, or bar; or
    - e. An employee, other than a gaming manager, who only conducts a calcutta, raffle, ~~and~~ or sports pool; or
    - f. ~~An employee, other than a gaming manager,~~ is employed by an organization that conducts games on no more than fourteen days during a calendar year.
  5. The attorney general may require fingerprints of a person. A local law enforcement agency may charge a fee for taking fingerprint impressions.
  6. The fee for a record check is twenty dollars and is not refundable. However, if a federal agency or local law enforcement agency has done a record check, the attorney general may waive the fee. The fee must be remitted by an organization, distributor, or person with the request form.
  7. ~~The~~ Unless a federal or local law enforcement agency conducts a record check, the attorney general shall do a the record check and provide a copy of the "request for record check" form to an organization or distributor which requested the record check and the person on whom the record check was done. This copy must indicate whether a criminal record was found or not found. If a criminal record is found, the attorney general shall also provide an organization or distributor and person with

a copy of the bureau of criminal investigation's criminal history record information. An organization or distributor shall review this report to determine whether a person is eligible for employment as an employee according to subdivision a or b of subsection 5 of North Dakota Century Code section 53-06.1-06.

8. If a person is not eligible for employment but has been temporarily employed pending a record check, an organization or distributor, within five days of receiving the copy of the "request for record check" form, shall terminate the person's employment. This period cannot be extended.
9. An organization or distributor shall retain the copy of a "request for record check" form and criminal history record information for one year from the end of the month in which a person voluntarily ~~separated from employment, a person was~~ or involuntarily separated from employment; ~~or the organization or distributor received the copy and a person had~~ or had not been temporarily employed pending a record check.
10. If a person, while employed by an organization or distributor, pleads guilty to or has been found guilty of a felony or misdemeanor offense referenced by subdivisions a and b of subsection 5 of North Dakota Century Code section 53-06.1-06, the person must immediately notify the organization or distributor. Upon notification, an organization or distributor, within five days, shall terminate the person's employment unless the person received a deferred imposition of sentence or deferred prosecution and has fully complied with the terms of the deferral.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

#### **99-01.3-02-03. Restrictions and requirements.**

1. An employee shall wear an identification tag while working in the gaming area of a site. The tag must clearly display a person's first name and first initial of the last name or the person's identification number, and organization's name. The tag must be worn on the upper one-third of a person's body. An organization shall provide a tag to a person and is equally responsible with the person that the tag is properly displayed.
2. An organization shall have the gaming law; chapter 99-01.3-02, general rules; chapter 99-01.3-03, accounting rules; and the rules chapter of each game type conducted at a site available in the gaming area for review by any person.



3. An organization shall have a policy manual on its conduct and play of games in the gaming area at a site available for review by any person. The manual must include policies for resolving a question, dispute, or violation of the gaming law or rules. The manual cannot include internal controls.
4. An organization shall maintain a list of all employees on a site, including their name, address, and telephone number. The list must be safeguarded and be available to the attorney general and law enforcement officials.
5. An organization shall ~~post~~ disclose or make available to players a description of the "gaming area" of a site authorization for applying subsection 1 and sections 99-01.3-04-03(1)(f), 99-01.3-06-02(3)(d), 99-01.3-08-06(3), 99-01.3-12-02(3)(c), and 99-01.3-12-04(2)(c).
6. An organization's top official shall provide to the governing board and membership in writing each quarter information on an organization's adjusted gross proceeds; cash profit; cash long or short; net proceeds; excess expenses; reimbursement of excess expenses; and, for a fraternal, veterans, or civic and service organization, a list of eligible uses. This information and how it was provided must be included in an organization's records. If an administrative complaint is issued to an organization, the top official shall disclose the allegation, in writing, to the board within seven days from the date the complaint was received. If an allegation is substantiated, the top official shall disclose to the board and membership, in writing, the allegation and sanction imposed within ninety days of the final disposition of the complaint.
7. A person may not modify a state gaming stamp or flare, including a last sale prize. An organization may not, independent of a distributor, add or delete a last sale prize.
8. A person under the age of twenty-one may not conduct or play games, except bingo and raffles, and, at an alcoholic beverage establishment, may not be a member of a drop box cash count team. An employee under the age of eighteen may not count drop box cash. A person under the age of sixteen may not conduct bingo.
9. An employee or a bar employee may not use inside information or provide inside information to any person.
10. The attorney general may waive a rule when it is for the best interest of the gaming industry and public.
11. If an organization does not plan to reapply for a license ~~by September thirtieth~~ for the next licensing period or relinquishes a license, it shall

return its unplayed games to the attorney general or distributor ~~within fourteen days~~. An organization may not destroy an unplayed or unreported game without permission of the attorney general.

12. When an organization disposes played deals of pull tabs and bingo cards, club specials, ~~coin~~ prize boards, tip boards, seal boards, and punchboards, the disposal method must assure complete destruction.
13. If an organization is forced to dispose accounting records or game pieces damaged in a natural or extraordinary disaster, it shall document each item disposed and provide a copy of the documentation to the attorney general within fourteen days before the disposal.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-02-04. Equipment acquisitions and use.**

1. An organization shall procure gaming equipment only from a distributor. However, an organization may:
  - a. Buy raffle tickets with a detachable stub from a printer or buy double admission tickets from any vendor;
  - b. Buy, lease, or sell a used pull tab or bingo card dispensing device from or to a distributor or another organization provided that a distributor records the transaction on a sales invoice; or
  - c. Buy, sell, rent, lend, exchange, or give its own used playing cards, jar bar, twenty-one or poker table, bingo hard cards, bingo machine, flashboard, dealing shoe, discard holder, chip tray, paddlewheel, or paddlewheel table from or to any organization. An organization may not sell or otherwise provide any of these particular items or any other item of gaming equipment, except playing cards, to any other person unless approval is obtained from the attorney general.
2. An organization may not use or knowingly permit its gaming equipment to be used for an illegal purpose.
3. An organization or an employee may not conduct or possess a deal of pull tabs or bingo cards, club special, tip board, seal board, ~~coin~~ prize board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards unless its flare has a gaming stamp.
4. If an organization or distributor suspects that a deal of pull tabs or bingo cards, club special, tip board, ~~coin~~ prize board, or punchboard may be

defective, the organization or distributor shall comply with guidelines prescribed by the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-14

### **99-01.3-02-05. Lessor and organization - Restrictions.**

1. ~~Except as prohibited by subdivision d of subsection 3, a~~ A lessor's oncall, temporary, or permanent employee who is not the lessor's spouse, lessor's common household member, management, management's spouse, or lessor's employee or agent who approved the lease may not, ~~directly or indirectly,~~ conduct games at a that site, including accessing a dispensing device, as an organization employee ~~on the same day the person is working in the area of the bar where alcoholic beverages are dispensed or consumed.~~
  - a. On a day when the employee is not working for the bar: or
  - b. On a day when the employee is working for the bar but is working in an area of the bar where alcoholic beverages are not dispensed or consumed.
2. No game may be directly operated as part of a lessor's business. However, a lessor may donate a gift certificate or cash or merchandise prize, but not a dispensed alcoholic drink, to an organization.
3. ~~A~~ Except as allowed by subdivision c, a lessor, lessor's spouse, lessor's common household member, management, management's spouse, officer, board of directors member, or, lessor's employee or agent who approved the lease, may not:
  - a. ~~As an officer or board member of an organization, participate in an organization's decisionmaking that is a conflict of interest with gaming;~~
  - b. Loan money or provide gaming equipment to an organization;
  - c. Interfere with or attempt to influence an organization's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds. However, a lessor may recommend an eligible use. If the lessor violates this rule, the attorney general may suspend any or all games at the site for up to six months;
  - d. Conduct games, including selling raffle tickets for any organization, at any of the organization's sites or, except for officers and board

~~of directors members, may not~~ play any game at the lessor's site:  
~~Refer to the definition of "bar employee" for an exception to this rule;~~

e: d. Require an organization's employee to assist, for or without compensation, in a lessor's business at the site. However, an organization's employee may voluntarily order drinks for customers;  
or

f: e. Count drop box cash.

4. A lessor who is an officer or board member of an organization may not participate in the organization's decisionmaking that is a conflict of interest with gaming.

5. Unless an organization or its employee has first received approval from the attorney general, follows guidelines prescribed by the attorney general, or an organization's employee patronizes a lessor in the normal course of a lessor's business, the organization or its employee may not buy a gift certificate or merchandise as a gaming prize directly or indirectly from a lessor, or buy merchandise, food, or alcoholic or nonalcoholic drinks from the lessor for the lessor's employees or patrons. Except as provided by subdivision e of subsection 3, an employee of an organization may not be an agent of the bar for any bar activity.

5: 6. An organization, employee, or bar may not, directly or indirectly, give a free game piece or chip, any free play of a game, or alcoholic drink to a person to play a game or as a prize in a game at a site. A lessor may at its own expense advertise gaming on promotional drink tickets.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

#### **99-01.3-02-06. Rental agreement.**

1. A rental agreement must be signed and dated by a lessor and organization.
2. An agreement must contain:
  - a. Term of the agreement which must be on a fiscal year basis from July first to June thirtieth or, if a site authorization is for a shorter period, the term is for the shorter period. Except for a site where bingo is the primary game, an agreement may not exceed three years;

- b. Monetary consideration;
- c. The inclusion of this statement with proper selections made:

"The lessor agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, ~~officers, board of directors, and or~~ an employee of the lessor who is in a position to approve or deny a lease may not, directly or indirectly, conduct ~~or play~~ games at the any of the organization's sites and, except for officers and board of directors members, may not play games at that site. However, a bar employee may redeem a winning pull tab or bingo card involving a dispensing device on behalf of an organization";

- d. If an organization provides a lessor with a temporary loan of funds for redeeming winning pull tabs ~~and~~ or bingo cards involving a dispensing device, a statement that the lessor agrees to repay the entire loan immediately when the organization discontinues using a device at the site; and

- e. Statements that:

- (1) Bingo is or is not the primary game conducted;
- (2) Twenty-one or paddlewheels, or both (involving a playing table), is or is not conducted and the number of tables on which the rent is based, including the number of tables on which a wager over five dollars is accepted;
- (3) Pull tabs is or is not conducted;
- (4) The rental agreement is automatically terminated, at a lessor's option, if an organization's license is suspended for more than fourteen days or revoked; and
- (5) An oncall, temporary or permanent employee, except a bar employee defined by subsection 3 of section 99-01.3-02-01 will not, directly or indirectly, conduct games at the site as an organization employee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.

3. Rent must be a fixed dollar amount per month.

- a. A participatory or graduated rate arrangement based on gross proceeds or adjusted gross proceeds is prohibited.

- b. If bingo is the primary game and it is not conducted through a dispensing device or if a site is leased by an organization that has the alcoholic beverage license for that site, the monthly rent must be reasonable. Factors include time usage, floor space, local prevailing rates, and available sites and services. An organization may pay seasonal expenses, such as snow removal, air-conditioning, and heating, to a vendor.
  - c. If bingo is not the primary game or if bingo is the primary game and it is conducted through a dispensing device, the maximum monthly rent must be according to subsection 5 of North Dakota Century Code section 53-06.1-11. Special considerations are:
    - (1) If two or more organizations conduct twenty-one or paddlewheels, or both, involving a table and pull tabs for less than a month at a temporary site which is a public or private premise, or if two or more organizations are issued site authorizations to conduct games at a site on different days of the week, the maximum monthly rent, in the aggregate, may not exceed the limit set by subsection 5 of North Dakota Century Code section 53-06.1-11; and
    - (2) If poker is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed. Otherwise, the rent for poker must be reasonable.
  - d. Except for applying subsection 3 or 4 of section 99-01.3-03-04, an organization or employee may not pay, nor may a lessor accept, any additional rent or expense from any source directly or indirectly for any other purpose, ~~such as~~ including office or storage space, snow removal, maintenance, equipment, furnishings, entertainment, or utilities. Except for a leased site at which bingo is the primary game conducted, an organization may not pay for any capital or leasehold improvements or remodeling.
4. If there is a change in the monthly rent or any other material change to a rental agreement, the agreement must be amended and a copy of it postmarked or hand-delivered to the attorney general before its effective date.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-07.4

**99-01.3-02-07. Gaming manager, shift manager, and reporting violations.**

1. An organization shall designate one person as the gaming manager. A gaming manager may not be an employee of a temporary employment agency. A gaming manager is the person who is responsible and held accountable for managing and controlling the overall gaming operation. A person may be a gaming manager for two or more organizations. When the gaming manager changes, an organization shall notify the attorney general on a prescribed form within fourteen days of the change.
2. An organization shall designate an employee at a site as a shift manager for each shift of each day. A shift manager shall be on the site during that shift and may not be an employee of a temporary employment agency. A shift manager is a person who is responsible and held accountable for regularly managing games at a site and ensuring compliance with the gaming law and rules by an employee, lessor, and player.
3. An organization, distributor, or gaming or shift manager shall immediately report any material violation of the gaming law and or rules and any gaming-related criminal activity to the gaming division of the office of attorney general and a local law enforcement agency.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-02-09. Persons restricted from playing games.**

1. An employee who is a shift or gaming manager may not play any game at any of the organization's sites. An employee who services a pull tab or bingo card dispensing device may not play the device at that site.
2. An employee may not play any game while on duty. However, for the game of bingo, if an organization's total gross proceeds for the previous fiscal year, for which tax returns were filed, was twenty-five thousand dollars or less, a volunteer who is not a bingo caller, shift manager, or gaming manager, may play bingo not involving a dispensing device while on duty.
3. An employee may not play pull tabs, including through a dispensing device, tip board, club special, coin prize board, or punchboard until after three hours of active play have occurred since the employee went off duty at that site. "Active" play means that a game has been available for play. A player may not provide and an employee may not accept an unopened pull tab as a tip.

4. An employee who is not a volunteer may play twenty-one while off duty at that site only on a table that has a video surveillance system.
5. A bar employee may not play bingo or pull tabs, which involve a dispensing device, while on duty. A bar employee may play bingo involving a device while off duty, and may play pull tabs involving a device while off duty after three hours of active play have occurred since the bar employee went off duty at that site, unless otherwise prohibited by subdivision d of subsection 3 of section 99-01.3-02-05.
6. An employee or bar employee taking a temporary break is still considered on duty.
7. If an organization allows an employee to play games at its site, it shall post disclose or make available to players the policy at that site.
8. A shift manager may not permit and an employee may not allow an employee's common household member, spouse, child, parent, brother, or sister, at a site, to:
  - a. Play pull tabs of a game while the employee is on duty as a jar operator for that game, regardless if the employee takes a temporary break or rotates to conduct another game. This rule does not apply to an employee who only places pull tabs in or withdraws currency from a dispensing device; or
  - b. Play twenty-one or paddlewheels at a table when the employee is dealing or is a wheel operator at that table.
9. An organization may prohibit a person from playing games at a site.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-02-10. Training and acknowledgment of the gaming law and rules.**

1. A gaming manager, ~~and a person~~ an employee who is principally responsible for ~~audit~~ auditing closed games or daily activity or does bookkeeping services, who have no previous gaming-related experience ~~as a gaming manager or bookkeeper in those capacities,~~ within thirty days of employment, ~~shall request training from the attorney general.~~ ~~A gaming manager and a person who is responsible for audit or bookkeeping services;~~ and within thirty days of each promulgation of rules, shall request training from the attorney general. The training must



include the gaming law and rules, recordkeeping, internal control, and tax return.

2. An employee shall read and acknowledge in writing, within thirty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions of the gaming law and rules which that relate to the person's job duties. The attorney general shall designate the provisions to be read. An acknowledgment must be dated, reference the provisions, and be part of the person's personnel file.
3. Except for a gaming manager and a person who is responsible for audit or bookkeeping services, this section does not apply to an employee who, of an organization that only conducts a raffle, calcutta, poker, paddlewheels described by subsection 1 of section 99-01.3-11-01, and or sports pool, or to an independent contractor.
4. ~~This section does not apply to an independent contractor.~~

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-03

### 99-01.3-03-01. Accounting records and system of internal control.

1. Except as otherwise provided by rule, an organization shall retain purchase invoices, receipts, accounting and bank records, including receipts documenting eligible uses and solicitations for net proceeds, for three years from the end of the quarter in which the activity was reported.
2. Except for an organization that has gross proceeds of twenty-five thousand dollars or less, only conducts a calcutta, raffle, sports pool, and or poker, or is involved only in conducting no more than two events during a fiscal year of July first through June thirtieth and each event lasts no more than fourteen calendar days, a governing board of the organization shall establish a written system of internal control, comprised of accounting and administrative controls. An organization may not permit any person to review this system, except the attorney general, law enforcement officials, authorized employees, and an adviser. If the attorney general determines that a system of internal control is inadequate, an organization shall remedy the inadequacy.
3. Accounting controls must include procedures and records that achieve these objectives:
  - a. Transactions are executed as authorized by management;
  - b. Gaming activity is properly recorded;
  - c. Access to cash, games, and other assets is permitted as authorized by management; and
  - d. Assets recorded on records are periodically compared to actual assets and any differences are resolved.
4. Administrative controls must describe the interrelationship of employee functions and their division of responsibilities.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### 99-01.3-03-02. Gaming account.

1. An organization shall maintain at least one gaming account at a financial institution located in North Dakota. Except as provided by subsection 3, this account must be used for depositing gaming funds and transferring

net proceeds to a trust account. For purposes of this rule, net proceeds is calculated as adjusted gross proceeds, less gaming and excise taxes, and less the greater of the actual gaming or allowable expenses. This transfer must be made by the last day of the quarter following the quarter in which the net proceeds were earned. The gaming account may be used for payment of expenses. An organization may transfer funds to its general account for payment of expenses. If an organization is not required to maintain a trust account, a disbursement of net proceeds to an eligible use must be payable to the ultimate use or recipient. A payment may be made by electronic transfer.

2. Interest earned is other income. A service fee is an expense.
3. Except to reimburse the account for a negative imbalance, and to deposit raffle nongaming funds, bingo dauber receipts, fees from players who use bingo card marking devices, prizes paid by an insurance company to an organization for payment to a player, and sales tax, the organization may not deposit nongaming funds into a gaming account.
4. If an organization buys a qualifying item of video surveillance equipment according to subsection 2 of section 99-01.3-08-04 and later sells or rents the item, it shall make a record of the transaction, deposit the gross receipts or rental income directly into its gaming account, and make a proper adjustment on the tax return.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-11

#### **99-01.3-03-03. Trust account.**

1. Unless an organization only conducts a calcutta, raffle, sports pool, and or poker or a combination of those games, or is involved in conducting no more than two events during a fiscal year of July first through June thirtieth and each event lasts no more than fourteen calendar days, an organization shall maintain at least one trust account at a financial institution located in North Dakota. Except to reimburse the account for a negative imbalance and as provided by subsection ~~5~~ 13 of section ~~99-01.3-14-01~~, this account must receive only funds from a gaming account. This account is used only to disburse net proceeds to eligible uses. A transfer of net proceeds to another trust account or to a closely related organization is not a disbursement of net proceeds. Net proceeds cannot be pledged as collateral for any loan.
2. An organization shall disburse net proceeds within a reasonable period.

3. Except for transferring funds to another trust account, an organization may not transfer funds from a trust account to any other bank account. A disbursement must be payable directly to the ultimate use or recipient. However, an organization may make a payment directly to a credit card company for charges on a credit card if the credit card use is restricted to eligible uses and may only reimburse its general account for compensation that qualifies as an eligible use and which is paid from the general account. A reimbursement must be documented by a supporting schedule. A payment may be made by electronic transfer.
  
4. An If an organization invests net proceeds in a certificate of deposit, bond, stock, or mutual fund, it shall report interest and distributed or reinvested dividend and capital gain income each quarter as an adjustment on a tax return. An organization shall record the actual or unrealized gain of market value on a consistent basis each quarter on the tax return. An organization may not deduct an actual loss on an investment a sale of net proceeds in a marketable security on the tax return, but may deduct an unrealized loss up to the amount of unrealized gain previously reported. Interest earned Unearned income and actual gains on an investment of net proceeds in a sale of a marketable security must be disbursed to an eligible use. A service fee is an adjustment to the account's balance.
  
5. ~~If an organization is involved in any of the following types of transactions, it shall deposit the net proceeds or income directly into its trust account or, if it is exempt from maintaining a trust account, deposit the net proceeds or income into its gaming account, and make a proper adjustment on a tax return:~~
  - ~~a. The organization receives net proceeds from another organization and the net proceeds have been designated for a specific eligible use which the recipient has paid for or will pay for with net proceeds; or the net proceeds have not been designated for a specific eligible use;~~
  
  - ~~b. The organization loans net proceeds and receives a repayment of principal or interest, or both; or~~
  
  - ~~c. A recipient returns net proceeds or interest income or reimburses the organization:~~

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-03-04. Restrictions and requirements.**

1. An organization is allowed an expense according to subsection 2 of North Dakota Century Code section 53-06.1-11 and an additional expense for qualifying items of security and video surveillance equipment ~~according to prescribed by~~ subsection 2 of section 99-01.3-08-04 or based on guidelines prescribed by the attorney general. The allowable expense amount may be used for any purpose that does not violate the gaming law or rules.
2. An organization may not base an employee's compensation on a participatory percentage of gross proceeds, adjusted gross proceeds, or net proceeds. An organization may pay a fixed bonus through an incentive program.
3. An organization may not pay or reimburse, nor may a lessor accept a payment or reimbursement from an organization, for any media advertising done by the lessor or any other person that is related to games at a site unless the organization's share of this expense is reasonably prorated to the benefit the organization receives and the media advertising is voluntary by the organization.
4. An organization may not pay or reimburse a lessor or share in the cost, nor may a lessor accept a payment, reimbursement, or sharing of the cost from an organization, of any sign advertising related to games at a site unless the sign is not owned by the lessor. If a lessor rents an advertising sign from a vendor, the organization's share of this expense must be prorated to the benefit the organization receives and the sign advertising is voluntary to the organization.
5. A player's uncollectible check is an expense. If an organization establishes a policy to reduce a player's cash prize by the amount of the player's uncollectible check and award the player the difference, if any, the organization shall ~~post~~ disclose or make available to players that policy.
6. If a door prize is awarded as a promotion of games, the cost of the door prize is an expense.
7. A net cash short is an expense and a net cash long is other income for a quarter.
8. Only an unopened pull tab, unopened set of stapled jar tickets, or set of banded jar tickets that has the band intact may be accounted for as unsold or defective when a game is reported on a tax return. An organization shall account for any single unsold or defective jar ticket at a proportional selling price of a stapled set of jar tickets.

9. If foreign currency is exchanged into United States currency, any loss is an expense.
10. The attorney general shall determine whether a theft of an organization's gaming funds can be deducted toward adjusted gross proceeds on its tax return and notify the organization. The attorney general shall consider whether the organization:
  - a. Immediately reported the theft to a local law enforcement agency and the attorney general;
  - b. Has documentation that substantiates the theft amount;
  - c. Had physical security of the funds;
  - d. Has an adequate system of internal control; and
  - e. Incurred an identifiable theft.
11. If an organization rents out gaming equipment, the income is nongaming income.
12. All accounting records must be completed and initialed or signed with a nonerasable ink pen. An organization shall maintain a register of each employee's name and the employee's initials or signature as the employee normally writes them on a record or report. The initials or signature of a person on a record or report attests that to the person's best knowledge the information is true and correct.
13. A fee charged a player ~~for entry into~~ to enter a twenty-one or poker tournament, less the cost of a prize, must be reported as other income. ~~A fee charged a player for entry into a poker tournament, less the cost of a prize, must be reported as gross proceeds.~~
14. For computing prizes on a tax return, a merchandise prize and a gift certificate are valued at an organization's actual cost and a donated prize is valued at zero. ~~An organization shall document the cost of a merchandise prize.~~
15. If a raffle, sports pool, or calcutta prize is forfeited and has previously been reported on a tax return, an organization shall report the prize as other income.
16. When a deal of pull tabs, deal of bingo cards involving a dispensing device, club special, tip board, seal board, coin prize board, sports-pool board, calcutta board, or a series of paddlewheel ticket cards is placed in play, an employee shall compare the game serial number on the pull

tab, bingo card, board, or card to the serial number on the state gaming stamp. If the two serial numbers are different, an employee shall immediately notify the distributor and complete a form prescribed by the attorney general.

17. If an organization pays a fee directly or indirectly to an insurance company to insure a contingency cash or merchandise prize for bingo or a raffle, the fee is an expense. If the insurance company pays or provides a prize directly or indirectly to a winning player, it is not reported as a prize on a tax return.
18. If an organization conducts twenty-one, it may pay monthly rent for more than one table provided that, for each additional table, the table is used at least thirteen times a quarter. This level of activity is based on a site's historical ~~average~~ experience, or seasonal activity, of each of the previous four quarters, regardless of which organization conducted twenty-one at the site. For a new site or a site that has been completely remodeled in appearance and function, the level of activity must be reviewed and or reestablished after the first full quarter. If an additional table is used at least thirteen times in at least one but not all of the previous four quarters, the allowable monthly rent for that table must be prorated over all the active months of the licensing year. For example, if a second table was used at least thirteen times in only two of the previous four quarters, the additional monthly rent for the second table would be a maximum of two hundred dollars per month (or three hundred dollars per month if a wager greater than five dollars is accepted on the table) multiplied by six months (totaling one thousand two hundred dollars) and prorated to one hundred dollars per month for the licensing year.
19. If an organization does not intend to reapply for a license for the next fiscal year of July first through June thirtieth, its license is revoked or license application is denied, and it has net proceeds that are not disbursed, the organization shall file an action plan with the attorney general. The plan must be filed within thirty days of the expiration of the license or when the license is relinquished or revoked or the license application is denied, and include:
  - a. The organization's financial statements for gaming and nongaming activity for the most recent year;
  - b. Planned sources of funds, dates of fundraising activities, and net income; and
  - c. Planned timetable for disbursing all the net proceeds and anticipated uses.

If the action plan is not timely filed, net proceeds must be disbursed within ninety days of the expiration of the license or when the license is relinquished or revoked or the license application is denied. The disbursement must be reported to the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-11

**99-01.3-03-06. Gross proceeds, IOUs, documenting cash and chip banks.**

1. Gross proceeds for a game must be separately maintained while the game is conducted. An organization shall use a separate cash bank for each game. However, the cash banks for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined. If an employee needs to establish or replenish a cash bank by withdrawing funds from the gaming account, the employee shall execute a cash withdrawal by check or authorized transfer withdrawal and reference the game's or games' cash bank. If a game's separate cash bank needs replenishment and another game's or games' cash bank, cash reserve bank, or nongaming funds are used as a source of cash, an IOU form must be used to record the loan and payback. An IOU form must include:
  - a. The source and destination of the funds;
  - b. For a club special, coin prize board, tip board, seal board, series of paddlewheel ticket cards, and punchboard, the game's gaming stamp number;
  - c. Amount and date of loan and repayment; and
  - d. Initials of a cash bank cashier or an employee for each transaction.
2. An organization shall document each game's daily starting and ending cash on hand, including a cash reserve bank. Unless there is only one employee on duty when a site opens or closes, two persons shall count the cash. ~~Both persons~~ Each person shall independently count the cash in the presence of each the other person and resolve any difference between the two counts. Then, one person shall record the count, and both persons shall initial the record.
3. An organization shall document the daily starting and ending ~~twenty-one and paddlewheel chip (including banks for casino and betting chips)~~ banks. The chip banks for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined. Unless there is only one employee on duty when a site opens or closes,



two persons shall count the chips and record the count by denomination of chip. Both persons shall independently count the chips in the presence of each other and resolve any difference. Then, one person shall record the count, and both persons shall initial the record.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-03-07. Prize register.** For a bingo session, raffle drawing, sports-pool board, and calcutta board, and twenty-one or poker tournament, an employee shall legibly print this information on a prize register when a prize is issued to a player:

1. Name of the site;
2. Game type:
  - a. Bingo - Date of the session and game number.
  - b. Raffles - Date of the drawing, winning ticket number, and initials of two employees who conducted the drawing unless the initials are on another document.
  - c. Sports pools - Date of the sports event, winning score, and gaming stamp number.
  - d. Twenty-one or poker tournament - Date of the tournament.
  - e. Calcutta - Date of the sports event and gaming stamp number;
3. Amount of a cash prize or a description and cost of a merchandise prize;
4. ~~Name and address of the player. If a record of win is made or a cash prize or retail value of a merchandise prize is fifty dollars or less, a player's address is not necessary;~~
5. Total amount of cash and cost of merchandise prizes awarded; and
6. Initials of preparer.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-03-08. Record of win.**

1. If a player wins a last sale prize or a seal prize, cash prize greater than two hundred dollars, or a merchandise prize that has a retail value price including sales tax exceeding two hundred dollars, an employee shall record the win. If a pull tab has two or more winning prize patterns, the requirement is based on the value of each prize pattern. A record of win must be completed for the total prize even if a player splits the prize with another person. The record must be a check drawn from the gaming account, numbered receipt, or flare of a sports-pool board, calcutta board, club special, tip board, coin prize board, punchboard, or seal board. A bar employee shall print this information on a receipt or an employee shall print this information on a check, receipt, or flare, unless it is already provided:

a. Name of the site;

b. Game type and, by game type:

(1) Bingo, excluding a dispensing device - Date of the session, game number, cash prize amount or description of a merchandise prize and retail value, and date of prize payout if different from the date of the session.

(2) Bingo, involving a dispensing device - Name of the game, cash prize amount, date of activity, and game serial number.

(3) Raffles - Date of the drawing, winning ticket number, cash prize amount or description of a merchandise prize and retail value, and date of prize payout if different from the date of the drawing.

(4) Pull tabs, including a dispensing device, punchboards, club special, tip board, seal board, and coin prize board - Name of the game, cash prize amount or description of a merchandise prize and retail value price including sales tax, date of activity, and game serial number.

(5) Sports pools - Date of the event, cash prize amount, date of prize payout, and gaming stamp number.

(6) Twenty-one or poker tournament - Date of the tournament.

(7) Calcuttas - Date of the event, cash prize amount, date of prize payout, and gaming stamp number;

c. A player's full name, address, and driver's license number, including the state of license registration. If the player is not personally known by a bar employee or an employee, this information must be

recorded from a pictured driver's license or tribal, government, or military identification. If a player does not have one of these pictured identifications, a bar employee or an employee shall record the player's full name from two other forms of identification or mail the prize to the player; and

- d. Initial of a bar employee or an employee.
2. After a record of win is completed at a site, a player shall sign and date it. However, this rule does not apply to a prize mailed to a player.
3. Unless a prize is for a last sale prize feature, a bar employee or an employee shall print, in ink, the check or receipt number on a pull tab, punchboard punch, or a bingo card involving a dispensing device.
4. A player who has actually won a prize shall claim the prize. A bar employee or employee may not falsify or permit a player to falsify a record of win or enable a player to conspire with another person to have the other person claim a prize. If a bar employee or employee determines that a player has falsified or attempted to falsify a record of win before the prize payout, the bar employee or employee shall deny the player the prize and notify the attorney general and local law enforcement agency.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-11

**99-01.3-03-09. Inventory records of games, paper bingo cards, tickets, cash banks, and chips and reconciliation.**

1. An organization shall maintain master and site inventory records of all deals and games that have a state gaming stamp affixed to their flares. The master records must include the sales invoice number, date received, name of game, dates of issuance to and received from a site, site name, period played, and quarter tax return on which reported, by gaming stamp number. The site records must include the gaming stamp number, date received, date placed, and date closed, by site and name of game. If an organization has only one site that is the location of its home office, it may combine the master and site inventory records. Each quarter an organization shall reconcile its inventory records of all deals and games that have a state gaming stamp affixed to their flares that are recorded as being in play and in inventory as unplayed to the items that are actually in play and in inventory. A person shall count these items that are actually in play and in inventory, compare this count to the inventory records, and resolve any difference.

2. An organization shall maintain master and site inventory records of paper bingo cards. The master records must include for each primary color and type of card; the sales invoice number, date received, serial number, number of cards bought, dates of issuance to a site, and site name, or include information prescribed by a method approved by the attorney general. The site records must include site name, primary color and type of card, serial number, quantity received, date received, and quantity issued and returned for each session, or include information prescribed by a method approved by the attorney general. Each quarter an organization shall reconcile its inventory records of paper bingo cards that are recorded as being in inventory to the cards that are actually in inventory. A person shall count these items that are actually in inventory, compare this count to the inventory records, and resolve any difference.
3. An organization shall maintain master and site inventory records of rolls of tickets. The record must include the date each roll is acquired, ticket color, beginning and ending ticket numbers, and number of tickets on the roll. Each quarter an organization shall reconcile its inventory of rolls of tickets that are recorded as being at the home office and site to the rolls of tickets that are actually on hand. A person shall count the rolls of tickets at the home office and site, compare this count to the inventory records, and resolve any difference.
4. An organization shall maintain a master record of ideal cash bank amounts and account for permanent increases or decreases. For each cash bank, the record must include the site, game type, game identifier, and amount. When a cash bank is started or when the ideal amount is permanently increased or decreased, the date, check number, amount, source or destination of the funds, and updated ideal cash bank amount must be recorded. Temporary increases or decreases in a daily cash bank do not need to be recorded. Each quarter an organization shall reconcile its master cash bank records to the actual cash banks. A person shall count the cash banks, compare the count to the current ideal cash bank amount recorded on the record, and resolve any difference.
5. An organization shall maintain ~~twenty-one and paddlewheel chip (casino and betting and payout chips)~~ chip master and site inventory records. The records must include the dates chips are acquired, transferred to, and received from a site and running totals, by value of chip. Each quarter an organization shall reconcile its inventory of ~~twenty-one and paddlewheel (betting and payout chips)~~ chips that are recorded as being at the home office and site to the chips that are actually in inventory. A person shall count the chips in inventory at the home office and site, compare this count to the inventory records, and resolve any difference.

6. The count and reconciliation must be done by a person who does not have access to deals, games, paper bingo cards, rolls of tickets, cash banks (and who does not have sole signatory authority of the gaming account), or chips. It must be documented, including the name and title of the person who does the count and reconciliation, date and procedure performed, result, corrective action taken, and initials of that person.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-03-10. Bank deposit and audit.**

1. The cash profit, less a documented increase or plus the decrease in the starting cash on hand for the next gaming activity, plus cash and merchandise prizes paid by check and cost of coins for a coin prize board, must be deposited in the gaming account by the third banking day following the day of a bingo session; club special, coin prize board, tip board, seal board, or punchboard is removed from play; sports-pool game; calcutta event; poker occasion; day's or interim period's pull tab, twenty-one or paddlewheel activity; or closed bingo prize flare involving a dispensing device. However, the receipts for a raffle, calendar, and master sports-pool board must be deposited in the gaming account by the third banking day following receipt of the cash by the person responsible for the activity.
2. For a day's pull tab activity, bingo session, raffle drawing, poker occasion, twenty-one ~~activity~~, and paddlewheel activity, and interim period's pull tab or bingo activity involving a dispensing device, a deposit slip or receipt must reference a site, name of the game or game type, date of activity, and deposit amount. The deposit amount for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined. For a club special, coin prize board, tip board, seal board, punchboard, sports-pool board, calcutta board, and series of paddlewheel ticket cards, a deposit slip or receipt must reference a site, name of the game, date removed from play, deposit amount, and gaming stamp number. For all game types, an employee who prepares a deposit shall initial the bank deposit slip. If another employee makes the bank deposit and has access to the cash, the employee shall also initial the bank deposit slip.
3. If an organization prepares a deposit slip for more than one type of game, it shall record on the deposit slip or a supporting schedule by each game type, the information required by subsection 2. A supporting schedule must reconcile to a validated bank deposit slip or receipt. A validated bank deposit slip or receipt and any supporting schedule must be included with the accounting records of each game type. If a bank

does not return a validated bank deposit slip that contains information required by subsection 2, an organization shall prepare a duplicate deposit slip, make a copy of it, or prepare a supporting schedule that reconciles to the bank deposit amount.

4. For a bank deposit, a person shall record the amount to be deposited on the game's accounting record and retain the copy of a two-part bank deposit slip and any supporting schedule with the accounting record. This person shall forward the accounting record, copy of the bank deposit slip, and any supporting schedule directly to a bookkeeper. A second person shall take custody of the bank deposit funds and the original of the bank deposit slip and take them to a financial institution or arrange for the funds to be deposited. If, before the bank deposit is made, the custody of bank deposit funds is transferred directly from a person to another person, face-to-face, and the cash is accessible to be counted, both persons shall independently count the cash in the presence of each other and resolve any difference. Then, one person shall record the amount on the accounting record, and both persons shall initial and date the record. The person who makes the bank deposit shall forward a validated bank deposit slip or receipt directly to a bookkeeper. An organization shall comply with this rule unless it uses another bank deposit procedure which has proper accounting control.
5. If an employee prepares or has custody of a bank deposit which is not scheduled to be immediately deposited, the employee shall safeguard the funds.
6. An employee who did not have access to the cash to be deposited shall, within a reasonable time, verify that the amount recorded on a daily or interim accounting record to be deposited was actually deposited according to a bank statement. The employee shall document the verification by initialing the accounting record and dating it. If more than one deposit amount is recorded on an accounting record, the employee shall initial the record for each verified deposit amount and date the record.
7. A closed game or daily activity must be audited, within a reasonable time, by a person who did not conduct the game and who did not have access to the total receipts or cash profit for the game's or day's activity. This person may not have sole signatory authority of the gaming account. A person who audits a closed game or daily activity shall verify the number and value of unsold chances, gross proceeds, number and value of prizes, adjusted gross proceeds, and cash profit. If the audit

reveals an irregularity, the person shall notify the appropriate organization representative.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-04

### 99-01.3-04-01. Bingo.

1. This chapter applies to bingo not involving a bingo card dispensing device.
2. "Bingo" is when a player buys a card or uses a bingo card marking device and marks squares as a caller announces a letter and number or only a number for speedball bingo. Speedball bingo is a game in which a bingo caller announces the drawn numbers in a fast manner. Except for a bonanza bingo or a game that has a certain number or all of its numbers predrawn, a winning player of a game is the player who first covers a predetermined pattern of squares by matching letters and numbers on a bingo card with balls drawn and called for that or another game and the player has timely called bingo. Except for a game that has all of its numbers predrawn, there must be a winning player. Bonanza bingo is a game in which a bingo caller predraws a certain quantity of balls before a session begins for a predetermined pattern and players buy and play cards throughout the session. During the session when the bonanza bingo game is conducted, unless a player has already won, the caller will draw additional balls until a player wins the game. In a game in which a bingo caller draws a certain quantity of balls for the game before a session begins for a predetermined pattern, players may buy and play the cards throughout the session.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### 99-01.3-04-02. Equipment. An organization shall use this equipment:

1. A device from which balls are withdrawn or a random number generator. If a random number generator is not used, a set of either seventy-five or ninety balls bearing the letters and numbers corresponding to the bingo cards in play. The balls must be stored in a safe storage place when not in use and be available for inspection by a player before a session begins. The balls must be equal size, weight, shape, and balance and must be in a receptacle before each game begins. A flashboard is optional.
2. Hard cards and paper cards, including paper cards that have two numbers in a square or enable a player to select and print numbers on a blank card, may be used. A blank card may be used if:
  - a. A card is a two-part carbonless card with a control number and five columns of numbers;



- b. A player shall legibly print in ink one number in each blank square. A middle square, if any, may be a free space. The numbers cannot be repeated on a card and they must correspond with the letters and numbers of the bingo balls;
  - c. After a card is completed, a player shall provide an employee with the card before the start of the game. An employee shall ensure that the numbers are legible, validate the original and duplicate parts of a card, retain the original part, and return the duplicate part to the player; and
  - d. An employee shall verify a winning player's card and match the card's original part to the duplicate part. A card must be voided if it is illegible or altered.
3. Before conducting a bingo session, an employee shall test the equipment and ensure it is working properly.
4. An Except to apply subsection 10 of section 99-01.3-04-03, an organization may not separate a collated set of paper bingo cards or cut up a paper bingo card that has two or more faces on it to separately sell the cards or faces.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-04-03. Conduct and play.**

1. These rules and information must be ~~posted~~ disclosed or made available to players:
- a. A person may not separate a paper card when there are two or more faces on a sheet;
  - b. A person under eighteen years of age may not play bingo unless an individual, eighteen years of age or older, accompanies a minor when buying a bingo card or package and throughout the session. The adult may not be an employee on duty. This rule is does not required to be posted apply if a person under twenty-one years of age is not allowed on the site or an organization has a permit or prize structure that does not exceed the limit of a permit;
  - c. If an organization does not restrict duplicate paper cards from being in play for a game, ~~including cards played through a bingo card marking device;~~ it shall ~~post or convey~~ disclose or make available

that information to all players before their purchase of cards or packages;

- d. The actual letter and number on a ball drawn or freely awarded is official;
  - e. If a person knowingly uses a fraudulent scheme or technique to cheat or skim involving bingo, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
  - f. A bingo card is void if it is taken outside the gaming area; and
  - g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.
2. ~~An organization shall comply with and post these~~ These policies must be disclosed or made available to players:
- a. A policy of when an organization may cancel a bingo session;
  - b. A policy that if a player has more than one bingo on one card or on two or more cards for a game, whether it is considered as one bingo or more than one bingo for splitting a prize with another winning player;
  - c. A policy that a bingo is timely called by a player when, on the last number called, the player calls the word "bingo" or other required word before the bingo caller announces the whole letter and number of the next ball to be called, or other policy;
  - d. A policy on sharing a prize by two or more winning players on identically or differently priced cards. A policy must include the following except that an organization may award a minimum prize:
    - (1) If a prize is cash and all winning players bingo on identically priced cards, the cash prize must be divided equally. An organization may round fractional dollars.
    - (2) If a prize is cash and the winning players bingo on differently priced cards, an organization shall award each winning player:
      - (a) The designated prize;
      - (b) An equal share of the designated prize; or

- (c) A proportional part of the designated prize for that card or any other fair method. The proportional part is the ratio that each winning player is in relation to the total number of winning players. To illustrate, if three players bingo on differently priced cards, each player is to be awarded one-third of the designated prize for that player's card.
- (3) If a prize is merchandise and it cannot be divided, an organization shall do one of these options which must be disclosed in the bingo program or promotional material or announced before the bingo session:
- (a) Award each winning player a substitute merchandise prize which must be of at least equal value and total the retail price value of the original prize. A merchandise prize may be redeemable or convertible into cash at an organization's option;
  - (b) Award a certain cash split amount that totals the retail value of the original prize; or
  - (c) Conduct a continuous or separate playoff game between the winning players;
- e. A policy that a player may or may not use a bingo card marking device and play additional paper bingo cards at the same time; and
  - f. A policy that a player may or may not share the player's cards bingo package with another player.
3. An organization shall make these announcements:
- a. Before each session, the policies on:
    - (1) When a bingo is timely called by a player;
    - (2) Whether the bingo caller, floorworker, or both must hear and acknowledge a player who calls the word "bingo" or other required word; and
    - (3) That a player is responsible for ensuring that the bingo caller, floorworker, or both hear and acknowledge the player; and
  - b. Before each game, the game's winning bingo pattern.

4. An employee may only assist a disabled player in playing a bingo card or assist a player in how to use a bingo card marking device. A legally blind or disabled player may use the player's personal braille or special card when an organization does not provide such a card. An organization may inspect and reject the card.
5. An employee may not sell a gift certificate unless:
  - a. A gift certificate is accounted for when it is sold. An employee shall issue a gift certificate to the purchaser and retain a copy or stub of the certificate with the daily records and record the certificate on a register to document the sale. An organization shall recognize a sale of a gift certificate as gross proceeds on the tax return for the quarter in which it was sold. A gift certificate must be used to buy only a bingo card or package;
  - b. A register is maintained which accounts for all gift certificates sold at a site. A register must include, for each certificate, a consecutive control number, selling price (value), dates issued and redeemed, sites at which it is issued and redeemed, and initials of the employees who issue and redeem the certificate; and
  - c. A redeemed gift certificate is signed by a player and retained by an organization with the daily accounting records. A player is issued a bingo card or package at the site when the gift certificate is redeemed.
6. If an organization changes a publicly announced bingo program for a session in which a potential prize or the number of games is reduced, an employee shall notify a player of the change before the player buys a card.
7. If an organization sells two or more differently priced cards or packages for a game, it shall use a different type ~~or~~ color, or serial number of card ~~for~~ or use a method approved by the attorney general to differentiate each differently priced card or package ~~or use a method approved by the attorney general to determine the winning prize.~~
8. If an organization accepts a discount coupon, the redeemed coupon must contain the dollar value or percentage discount and be signed by a player. An employee shall write the value of the bingo card or package purchased on the face of the coupon unless the value is already stated, record the date on the coupon or on a group of coupons for a session, and retain the coupon with the daily records. The value of a player's one or more coupons must be less than the value of the card or package bought.

9. If an organization accepts a donated item in exchange for a discount, an employee shall account for the discount on a register as part of the daily records. A discount must be less than the value of the card or package bought. A register must contain:
  - a. Bingo session and date of the session;
  - b. Amount of the discount;
  - c. Value of the bingo card or package bought;
  - d. Signature of the player;
  - e. Total amount of bingo card or package discounts for the session; and
  - f. Date and initials of the cashier.
  
10. A card or package must be bought on a site immediately before the start of a game or during a session. However, an organization may presell a card or package for a special session that involves a bingo prize or prizes that equal or exceed ten thousand dollars for the session provided the organization:
  - a. Uses a consecutively numbered two-part receipt to register a player who prepays. One part is issued to a player who shall redeem the receipt to receive the card or package. The second part is retained by the organization to account for the gross proceeds;
  - b. Separately accounts for the gross proceeds and reports it on a tax return for the quarter in which the game is conducted; and
  - c. Provides a card or package to the player before the start of the session that day.

Except for a bonanza bingo or a game that has all of its numbers predrawn, no card may be sold for a game which is in progress or ~~concluded~~ ended. If a paper bingo card is included in a package for a game in progress or ~~concluded~~ ended, the card must be withdrawn and voided or destroyed. An employee may exchange a purchased package for another package if the employee accounts for all the cards of the first package and a session has not started.

11. An organization may allow a player to use a bingo card marking device provided by the organization that marks an electronic card image of a purchased card as follows:

- a. A device cannot be reserved for a player unless a player is disabled. An organization shall provide each player an equal opportunity to use the available devices on a first-come, first-served basis. A device cannot be issued through a floorworker;
- b. A device must be used only at a site where the site system is located and the session is being conducted;
- c. A device must be rented for a fixed amount, regardless of the price for a card or package or number of cards played through the device, or provided free to a player for the player's temporary use during the session;
- d. No player can use more than one device at a time during a session;
- e. No player can play more than seventy-two cards per game on a device and cannot choose or reject downloaded cards;
- f. An organization shall ~~ensure that any~~ use paper bingo cards ~~used during in~~ the session ~~that~~ are of a series different than the cards downloaded in the devices;
- g. If a card or package may be used in a device and in paper form, it must be sold for the same price. An organization may sell a special card or package to a player for use only in a device. The organization may require a player to buy a minimum-priced card or package to use a device;
- h. If a player rents a device while a game for that session is in progress, the player may not play that game and a cashier shall notate on the player's receipt that the specific game number is void;
- i. An organization may print a facsimile of a winning card and post it for players to inspect;
- i. j. A player shall use an input function key on a device to mark each number as it is called. When a player inputs a number, a device may automatically mark all the player's cards that contain that number;
- j. k. If a player has a winning card, the player shall:
  - (1) Timely call bingo according to subdivision c of subsection 2 and it must be by a method other than through a device; and
  - (2) Provide the device with the winning card displayed to a floorworker to verify according to subsection 18;

- k. l. If a player's call of a bingo is disputed or if the attorney general makes a request, an organization shall print the winning card stored on the device;
  - l. m. An organization shall have one spare device available should a device in use malfunction. If a player's device malfunctions, the player may exchange the device for a spare device. An organization shall restore the player's same cards from the site system;
  - m. n. An organization may perform routine maintenance on a device; and
  - n. o. An organization shall back up all of a site system's accounting information for a session on a report or separate electronic media immediately after that session and retain the backup file for ~~one year~~ three years from the end of the quarter in which the activity was reported on a tax return.
12. An ~~After the start of a session, an~~ organization may not refund the purchase price of a card or package unless a site incurs an electrical power loss, there is inclement weather, an organization experiences an extraordinary incident, a session is canceled, or a player has an emergency.
  13. If an organization sells hard cards before each game, during the game an employee shall count the number of hard cards played by all the players to the number recorded as sold. If the comparison reveals an irregularity, the gaming manager shall take corrective action.
  14. An organization may not ~~do an "all the cards you can play" promotion for a fixed price~~ sell a bingo package that contains a variable number of cards based on each player's ability to play. Each separately priced package must contain a standard number of cards.
  15. If a game has an actual or potential prize valued at five hundred dollars or greater or involves two or more differently priced cards or packages, an employee shall use an electronic bingo card verifier; record in writing the called numbers and the sequence in which they were drawn and retain the record for three months; or audiotape the bingo caller calling the balls and retain the tape for three months. Also, when a player bingos, an employee shall record in writing or audiotape the following and retain the record for three months.
    - a. Game number, winning pattern, type of card (regular, premium, super), series (card) number, and last number called; and
    - b. Cash register receipt number, if applicable.

16. Except for speedball bingo or when a monitor or random number generator is used, a caller shall manually display the letter and number on the ball to players. An employee shall announce the letters and numbers on the balls or displayed by a random number generator in their exact sequence; however, numbers freely awarded do not need to be announced. If a player calls bingo and the bingo is invalid, the next ball called must be in sequence of the balls drawn.
17. A player may bingo more than one time on the same card when an organization conducts continuation games of more than one pattern on the same card.
18. A winning card must be verified by an employee and one neutral player or person unless an electronic bingo card verifier is used. A floorworker may not access a verifier. For a winning card on a bingo card marking device, an employee shall compare the serial number of the device to the receipt for the cards played on that device.
19. An organization may offer a variety of prizes to a winning player who may choose a prize by random selection or chance. A player may win an additional prize by choosing the prize by random selection or playing a game of skill if the player is not required to give anything of value. An organization shall disclose the potential prizes in the bingo program and notify a player of these prizes before the player chooses a prize or plays a game of skill.
20. ~~No bingo card or package may be a prize.~~ An organization may not award, as a prize, a cash, merchandise, merchandise gift certificate, or gift certificate that can be redeemed for a bingo card; or package, or any other game piece.
21. An organization may conduct a qualifying game whereby a player wins the game's prize and an opportunity to play in a special game, but not for free.
22. An organization may award a bonus that is based on a factor incidental to a bingo program if it is disclosed in a program, calendar, or flyer, and announced before a session, and is recorded on a prize register. Factors include a player bingoing on a certain color of card, combination of colored cards, last number called, or winning a game on the player's birthday.
23. If a player bingos and an employee determines that the player is playing more bingo cards than were bought, the player's bingo is void.
24. Bonanza bingo and a game that has all of its numbers predrawn must be conducted as follows:



- a. A caller shall initially call a certain quantity of balls. While a caller initially calls the bingo balls or before the caller calls the next continuous number, a player shall verify that the letter and number on the balls drawn are correctly displayed. A posted display must be used for the games, have restricted access, and reference that game;
- b. A card must be sealed and unpeekable when it is sold;
- c. An organization may sell or exchange cards throughout a session until sales are closed. ~~Except for a game that has all of its numbers predrawn and~~ if an organization that ~~does not permit exchanged exchanges~~ cards, an employee shall, before the next continuous number is called, fully account for the floorworkers' sales of cards according to section 99-01.3-04-07. A floorworker may not turn in any exchanged card after the accounting is begun;
- d. If a player bingos before the next continuous number is called, the player wins. Otherwise, an additional bingo ball is drawn until a player bingos. This rule does not apply to a game that has all of its numbers predrawn;
- e. A game may not extend beyond a session;
- f. If an organization permits a player to exchange a partially played card for a new card and pay a discounted or exchange price, an employee shall:
  - (1) ~~Uniquely mark (validate) each card to be used during the session by validating~~ Validate the date of the session on the card with a mechanical device or rubber stamp. A card validated for a session, but not sold, must be voided. The organization shall use a different color of card for each game ~~of a session and for each session of~~ conducted at a site during a day;
  - (2) Retain the exchanged cards as part of the daily records for six months;
  - (3) Record the validation ~~designations~~ date and card color ~~combinations~~ used by session; and
  - (4) Reconcile the cards, accounting for:
    - (a) Number of cards taken from inventory which must be independently counted and verified by two employees who shall initial and date the verification;

- (b) Number of cards sold;
  - (c) Number of cards exchanged, which must be separately maintained for each floorworker. The cards must be recounted by an employee who is not a floorworker and who did not complete the floorworker sales report. The employee who controls the floorworker sales report shall band each floorworker's exchanged cards separately, identify the banded group with the floorworker's name, session, and initial and date. A floorworker shall also initial the floorworker's banded group;
  - (d) Number of cards returned to inventory and voided which must be independently counted and verified by two employees. Each person shall initial and date the verification; and
  - (e) Document any discrepancy and corrective action taken; and
- g. All A voided cards card must be retained for six months.
25. If an employee determines, during or immediately after the play of a game and before a card is verified as a winning bingo, that a ball is missing, the employee shall void the game and offer the players a fair alternative.
  26. Except for a game that has all of its numbers predrawn and for which an organization has recorded the information required by section 99-01.3-03-07 on the winning card and retains the card, an employee shall record a prize and bonus prize on a register according to section 99-01.3-03-07.
  27. Unless written approval is obtained from the attorney general for use of another receipting method, an organization shall receipt gross proceeds, including an additional amount paid by a player for a chance to win an extra prize in a special game, by a cash register, tickets, paper card count, or floorworker sales report. The receipting method must reference the primary color and type, and serial number of the cards sold, or reference other information approved by the attorney general.
  28. For a site where bingo is the primary game or a site that is leased by a licensed organization, the organization or any person may not pay bingo prizes in which the total bingo prizes exceed total bingo gross proceeds for two entire consecutive quarters. However, if bingo is the primary game at the site, a bingo prize that equals or exceeds ten thousand dollars is excluded from the calculation of total bingo prizes.

29. An organization shall have a written bingo program for each session. However, if the program does not change each day or session, an organization may retain one program and record the dates on which it applied. A program must contain:
- a. Name of a site or organization;
  - b. Date of the session or dates of the sessions;
  - c. Description of each game and the game's prize; and
  - d. Selling prices of the cards or packages.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.1

**99-01.3-04-04. Cash register.** This receipting method may be used to record gross proceeds of packages, hard cards, and paper cards, excluding floorworker sales, by issuing consecutively numbered receipts.

1. A receipt must contain:
  - a. Name of a site or organization;
  - b. Date of the session; and
  - c. Selling price of a card or package and receipt number.
2. A cash register must:
  - a. Have at least a consecutive four-digit receipt number which does not return to zero at the end of any use and retain its transaction count between uses if it is off or without electricity; and
  - b. Separately record each type of regular and discounted priced card or package sold, including a sale of a card or package related to a redeemed gift certificate, and provide a total for each type of sale. For a discounted card or package, the regular price may be recorded provided that the discount is recorded and accounted for on a supporting schedule. When a gift certificate is sold, the selling price ~~may~~ must be recorded on a cash register or daily receipting record.
3. A cash register receipt for a void, refund, or similar item must be initialed and retained with the daily records.

4. All transactions and control totals must be recorded on an internal tape that must be retained with the daily records. If a cash register is also used for a purpose other than bingo, the internal tape from the other use must also be retained.
5. A cash register cashier may not issue a refund or void a sale that has been recorded as a transaction, but may do a no sale transaction to access a cash drawer. For a refund, a cashier's supervisor shall execute a refund and initial the refund transaction on the internal tape. For a voided sale, a cashier's supervisor shall execute a void and initial the void transaction on the internal tape. If a supervisor is not available or if the cashier is the supervisor, another employee shall comply with this rule.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-04-05. Tickets.** The ticket receipting method may be used to record gross proceeds of packages, hard cards, and paper cards, including floorworker sales, by issuing consecutively numbered tickets. These rules apply:

1. All tickets on a roll must have a preprinted consecutive number; and
2. Tickets must be issued consecutively from a roll. The daily records must contain the ticket color, ticket selling price, and lowest and highest numbered tickets issued from each roll for a session. Every ticket on a particular roll must be issued for the same price. Tickets issued for each type of sale must be recorded separately. A ticket not issued during a session that bears a number below the highest numbered ticket issued, along with any tickets from the end of the roll which will not be issued in a future session, must be retained as part of the daily records as unsold.
3. A discount coupon and gift certificate must be recorded in the daily records.

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-04-06. Paper card count.** The paper card count receipting method may be used to record gross proceeds of paper bingo cards. The daily records must include the total number of cards or collated sets taken from inventory and returned to inventory. Unless there is only one employee on duty when the cards or sets are taken from or returned to inventory, the count of the cards or sets must be done by two persons. Both persons shall independently count the cards or sets

in the presence of each other and resolve any difference. Then, one person shall record the count, and both persons shall initial the record. The record must include the selling price of the card or set and number of cards or sets issued, returned, voided, and sold for each type of sale card for the session. A discount coupon and gift certificate must be recorded in the daily records.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-04-07. Floorworker sales report.** The floorworker sales report receipting method may be used to record gross proceeds of paper bingo cards sold by floorworkers. A report must be completed, for each floorworker, by an employee who is not a floorworker. For a bonanza bingo game in which an organization permits a player to exchange a partially played card for a new card and pay a discounted or exchange price, a report must contain all the information required by subsections 1 through 9. For all other games, each a floorworker's report must contain all the information required by subsections 1 through 6. Also, for all other games, by game, and must contain the information required by subsections 7, 8, and 9 must be completed, by session.

1. Game number.
2. Floorworkers' names or assigned numbers.
3. Selling price of each single (one card) and packet.
4. Number of singles and packets issued to each floorworker, by game. The employee issuing the cards and the floorworker shall initial the report. If an organization sells singles at a discount, the number of discounted sets must be predetermined and separately accounted for when issued to a floorworker.
5. Number of singles and packets returned by floorworker, by game, as unsold, including the number of exchanged bonanza bingo cards. The floorworker and an employee who is not a floorworker shall count the cards and initial the report in the presence of each other.
6. Number and value of singles and packets sold by each floorworker, by game.
7. Amount of cash turned in to a cashier by floorworker. The floorworker and the cashier shall count the cash and initial the report in the presence of each other.
8. Amount of cash long or short by floorworker.

9. Total value of singles and packets sold, total cash turned in, and total cash long or short.

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-04-08. Recordkeeping.**

1. For each session, records must include:
  - a. The gross proceeds for each type of sale or game. If a site system involving bingo card marking devices is used, records must include the summary report for the session according to subdivision c of subsection 1 of section ~~99-01.3-16-10~~ 99-01.3-16-09.1;
  - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
  - c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sessions for a quarter must reconcile to the tax return;
  - d. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
  - e. Inventory records according to subsections 2 and 3 of section 99-01.3-03-09(2) 99-01.3-03-09;
  - f. If bingo is the primary game at a site, the number of players and time of the count;
  - g. A copy of or reference to a bingo program according to subsection 29 of section 99-01.3-04-03;
  - h. Redeemed gift certificates and discount coupons; and
  - i. Purchase invoice or receipt documenting the cost of a merchandise prize.
2. The cash profit (see subdivision a of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10.

3. The count and reconciliation of paper bingo cards, rolls of tickets, and a cash bank according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-05

**99-01.3-05-01. Raffle.** A raffle is a game in which a prize is won by a player who bought a raffle ticket or square on a board. A winning player is determined by drawing a ticket stub or number of a square on a board from a receptacle or by an alternate fair method. A calendar raffle is a raffle in which a player's ticket stub is entered in two or more drawings held on predetermined days over an extended period of time for predetermined prizes. The conduct of a raffle is the drawing.

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-05-02. Tickets - Limitations and requirements.**

1. Each raffle ticket is a separate and equal chance to win with all other tickets sold. A person may not be required to buy more than one ticket, or to pay for anything other than the ticket, to enter a raffle. An organization may sell several tickets or sell tickets in advance of a special event to a person at a discount. A discounted ticket must be specifically designated as a discounted ticket on the ticket and its stub. The number of discounted tickets must be predetermined and separately issued and accounted for when issued to a ticket seller.
2. An organization may not allow a raffle ticket seller to retain a ticket for free or retain any portion of the price of a ticket as compensation, and may not compensate the seller a certain amount or provide a gift for selling a winning ticket. An organization may ~~compensate~~ provide a raffle ticket seller a fixed amount for selling the most or a certain number of tickets. No raffle ticket can be resold.
3. A raffle ticket must have a detachable stub ~~which~~ that is consecutively numbered. Except for the use of double admission tickets, a stub must have a duplicate number corresponding to the number on the ticket and contain the purchaser's name, address, and telephone number. A ticket must be issued, as a receipt, to a player. For a raffle conducted by a licensed organization, the ticket numbers must be mechanically or electronically imprinted. For a raffle conducted by an organization that has a ~~local~~ permit, the ticket numbers may be manually imprinted.
4. An employee may not sell a ticket on a site where another organization is licensed or has a ~~local~~ permit unless the employee is granted permission by the lessor and other organization. An employee of a lessor may sell raffle tickets at the site for the organization authorized to conduct games at that site.



5. A ticket seller shall return the stubs of all tickets sold. The stubs must be intermixed in a receptacle.
6. An organization shall return the price of a ticket to a player if the stub of the player's ticket was not placed in the receptacle for the drawing.
7. For a calendar raffle, the stub of each ticket sold must be entered in all the drawings conducted since the ticket was sold. A licensed organization may not conduct a calendar raffle for other than a fiscal year beginning July first and ending June thirtieth.
8. An organization may not conduct a drawing unless two employees are present. A drawing must occur at an authorized public or private site.
9. In conducting a drawing, an employee shall draw a stub for the highest valued prize first. If there is more than one prize, an employee shall continue drawing for the prizes in the order of descending value. A prize is valued at its cash value or retail price. An organization may defer announcing the names of the winning players and respective prizes until after all the drawings have occurred and may make the announcement in any sequence. This rule does not apply when an organization adopts a written policy to place a winning player's stub immediately back into a receptacle to potentially be drawn for another prize.
10. An organization may not print any work or phrase on a ticket, promotional material, or advertising which implies or expresses that a purchase of the ticket is a charitable donation.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-05-03. Prize restrictions.**

1. No prize may be real estate, ticket for entry into another raffle, or live animal except for beef or dairy cattle, bison, sheep, or pig. A live animal must be donated and may not have a value exceeding one thousand dollars. A prize must be an item that may be legally owned and possessed and has a value or a right to a free service. ~~No prize can be a coupon or discount that requires a~~ A winning player may not be required to first purchase pay for or buy something to receive a prize. Cash or merchandise prizes may be awarded. A cash prize may be based on a percentage of gross proceeds. A single cash prize cannot exceed one thousand dollars and, during one day, the total cash prizes cannot exceed three thousand dollars.

2. An organization may convert a merchandise prize to a cash prize; provided, that the retail price of a single merchandise prize does not exceed one thousand dollars and, during one day, the retail price of the converted merchandise prize and cash prizes do not exceed three thousand dollars.
3. An organization shall own or have a contract to acquire a merchandise prize before a drawing. However, an organization does not need to register or title an automobile or similar item.
4. Besides a primary prize that is stated on a ticket to be awarded, an organization may offer an additional unguaranteed cash prize limited to one thousand dollars or merchandise prize provided:
  - a. A ticket must describe the prize ~~and state that it is not guaranteed to be won~~;
  - b. The prize is predetermined and limited to a winning player of one of the other prizes;
  - c. A player is not required to pay an additional amount or, ~~forfeit a prize, or be present~~ to participate;
  - d. Unless an organization owns a prize, an award of the prize must be insured; and
  - e. A drawing is conducted from all tickets sold.
5. If an organization has not been able to recover the cost of the prize, it may cancel a raffle and refund the gross proceeds.
6. A prize winner must be drawn or determined on the date indicated on a ticket unless a different date is requested in writing and approved by the attorney general before the date of the drawing. If a different drawing date is approved, an organization shall notify the purchasers of the tickets of the change by contacting each purchaser or by making a public announcement. The attorney general may, for good cause, change the date for a drawing. ~~This subsection does not apply to double-admission tickets.~~
7. Within seven days of a raffle, an organization shall notify the winning player verbally or, if the value of the prize exceeds two hundred dollars, in writing, of the prize and arrange the pickup or delivery of the prize. If a prize remains unclaimed by a winning player for thirty days following the date of the written notification and an organization has made a good-faith effort to contact the winner to redeem the prize, the organization may retain the prize, have a second prize drawing, or award

it in another raffle or game. ~~This subsection does not apply to double admission tickets.~~

8. An organization may award a bonus prize based on a separate drawing of previously drawn winning tickets.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 36-21.1-09, 53-06.1-01.1, 53-06.1-10.1

**99-01.3-05-04. Information on a ticket.** Except for double admission tickets, each ticket must contain this preprinted information:

1. Name of organization;
2. Ticket number;
3. Price of the ticket, including any discounted price;
4. Prize, description of an optional prize selectable by a winning player, and or option to convert a merchandise prize to a cash prize that is limited to the lesser of the value of the merchandise prize or one thousand dollars. However, if there is insufficient space on a ticket to list each minor prize that has a retail price not exceeding ten fifteen dollars, an organization may state the total number of minor prizes and their total retail price;
5. For a licensed organization, print "office of attorney general" and license number. For an organization that has a local permit, print the authorizing city or county and local permit number;
6. A statement that a person is or is not required to be present at a drawing to win;
7. Date and time of the drawing or drawings and, if the winning player is to be announced later, date and time of that announcement. For a calendar raffle, if the drawings are on a the same day of the week or month, print the day and time of the drawing;
8. Location and street address of the drawing;
9. If a merchandise prize requires a title transfer involving the department of transportation, a statement that a winning player is or is not liable for sales or use tax;

10. If a purchase of a ticket or winning a prize is restricted to a person of a minimum age, a statement that a person must be at least " \_\_\_\_\_ " years of age to buy a ticket or win a prize; and
11. A statement that a purchase of the ticket is not a charitable donation;
12. If a secondary prize is an unguaranteed cash or merchandise prize, a statement that the prize is not guaranteed to be won and odds of winning the prize based on numbers of chances; and
13. If a prize is live beef or dairy cattle, bison, sheep, or pig, a statement that the winning player may convert the prize to a cash prize that is limited to the lesser of the value of the animal or one thousand dollars.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-05-05. Double admission tickets.** An organization may use double admission tickets provided:

1. Two single tickets must be printed side by side on a roll with a consecutive number. Both tickets must have the same number;
2. A list of the prizes must be disclosed or made available to players or the prize must be present at the site. If there is more than one prize, an organization may use a different receptacle for each prize to enable an employee or player to place one of the player's ticket tickets in the receptacle related to a certain prize. All tickets must be sold consecutively or in consecutive sets at a site on the day of the raffle. All the tickets of each separately colored roll must be sold for the same price on that day. An organization may use a separate colored roll to sell several tickets to a person at a discount. The organization and player each retains one ticket;
3. A winning player need not be present when a drawing is held but shall claim the prize within a reasonable redemption period set by the organization that day. Otherwise, an organization shall conduct a second prize drawing, or more, until the prize is claimed. A statement of the time of the drawing and redemption period must be on all promotional material and be posted at a site; and
4. An organization shall record in its daily records the color and selling value of each ticket and the lowest and highest numbered ticket sold from each roll. Any tickets left on a roll which will not be sold in any other

raffle must be retained as part of the daily records. This subsection does not apply to a local permit.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-05-06. Reporting gross proceeds and prizes.**

1. When the sales price of a raffle ticket relates partly to admission for a meal or other nongaming activity, an organization shall deposit the gross proceeds into its gaming account and allocate the amount between gaming and nongaming activity in this order:
  - a. An amount is allocated to raffle gross proceeds equal to the cost of the prize.
  - b. An amount is allocated to nongaming activity to recover its cost. This amount must be documented and is not reported on a tax return.
  - c. The remaining amount is allocated to raffle gross proceeds.
2. If an organization conducts a raffle in which the prize drawing is in one quarter, the gaming activity must be reported in the quarter in which the prize drawing is held. If an organization conducts a raffle in which prize drawings are in more than one quarter, the gross proceeds and prizes must be reported as:
  - a. Report gross proceeds for a quarter based on the percent percentage of prizes awarded in that quarter in relation to the total prizes to be awarded in all the quarters; and
  - b. Report prizes in the quarters in which the drawings are held.

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-05-07. Recordkeeping.**

1. For each raffle, records must include:
  - a. Purchase invoice documenting the purchase of tickets; and range of ticket numbers printed; ~~ticket seller's name, quantity issued, range of single and discounted raffle ticket numbers issued to a seller, and quantity sold;~~

- b. Ticket distribution log containing a ticket seller's name, quantity issued, range of single and discounted ticket numbers issued to the seller, and quantity sold;
  - c. Reconciliation of the cash received from each ticket seller based on the number of tickets sold, including discounted tickets, date cash is received, and a schedule of bank deposits;
  - e: d. For double admission tickets, the daily starting and ending cash on hand, IOU records according to section 99-01.3-03-06, and daily records according to subsection 4 of section 99-01.3-05-05;
  - d: e. A sample of a ticket;
  - e: f. The stubs of all sold tickets which must be retained for one year from the end of the quarter in which the activity was reported on a tax return;
  - f: g. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
  - g: h. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all raffles for a quarter must reconcile to the tax return; and
  - h: i. Purchase invoice or receipt documenting the cost of a merchandise prize and documentation of the cost of nongaming activity according to subdivision b of subsection 1 of section 99-01.3-05-06.
2. For double admission tickets, inventory records according to subsection 3 of section 99-01.3-03-09.
  3. The total receipts, less a cash prize, must be deposited according to section 99-01.3-03-10.
  4. The count and reconciliation of rolls of tickets according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-06

**99-01.3-06-01. Games - Definitions.** This chapter applies to an organization that conducts pull tabs, club specials, tip boards, seal boards, coin prize boards, and punchboards, but not pull tabs involving a dispensing device. The maximum price per chance is two dollars. A coin prize board, club special, punchboard, seal board, and tip board are conducted as a single game which may have a cash or merchandise prize and may offer a one or more seal prize prizes. ~~A game that allows a seal prize may have more than one seal.~~ The value of a seal prize may exceed the value of the top tier prize. The value of a last sale prize cannot exceed the value of a the top tier winning prize. If a merchandise prize is awarded, its retail value must be stated on a flare. An organization shall complete the description of a merchandise prize and retail value of the prize on a flare for a game that has a merchandise prize. Retail value includes sales tax. For pull tabs described by subsection 3, only a cash prize can be awarded, not a merchandise or seal prize.

1. "Club special" means a placard used with pull tabs and it contains numbered lines and a seal covering the winning number of the top tier prize. A player may win a minor prize or, if the player has a pull tab with a number matching a predesignated number on the placard, would sign the player's full name on the line. When all the lines are signed, a seal is removed to reveal a winning line number. A player whose signature is on that line wins the seal prize. The maximum number of pull tabs in a deal is four hundred ten. The maximum cash prize or seal prize value, including the retail price of a merchandise prize and sales tax, is one hundred dollars.
2. "Coin Prize board" means a board used with pull tabs ~~and to which coins award cash or merchandise prizes. Coins of various values are may be affixed. Under to the board and, under~~ each coin, a cash prize value is preprinted on the board. A board ~~contains~~ may contain numbered lines and ~~may contain~~ a seal covering a winning number. A player having a pull tab with a number matching a predesignated number on a board for a seal prize signs the player's full name on the numbered line or supplemental sheet. However, if ~~the~~ a number or symbol matches a winning number ~~for or symbol assigned to a specific coin or minor prize,~~ the player wins that coin or prize, and a cash prize value stated under the coin. A last sale prize may be awarded. When the board is closed, a seal is removed to reveal the winning line number. A player whose signature is on that line wins the seal prize. No board may be closed unless all the top tier winning pull tabs have been redeemed, all the pull tabs are sold, and all the seals have been opened, or the board has been conducted for ninety calendar days. A seal prize is not considered a top tier prize. If a coin is not awarded, an organization shall determine the prizes to report on a tax return by prorating the total cost of the coins, according to their face value, of the coins that were awarded to the total face value of all the coins. An organization may use an unawarded prize

in another game, sell the prize, or deposit the coin in the gaming account. The maximum number of pull tabs in a deal is two thousand. The maximum cash prize or seal prize value, including the retail price of a merchandise prize and sales tax, is five hundred dollars.

3. "Pull tab" means a folded or banded ticket (jar ticket) or a card with break-open tabs (pull tab) or latex covering. Unless otherwise stated, the terms "pull tab" and "jar ticket" are used interchangeably. A winning pull tab contains certain symbols or numbers. The maximum cash prize is five hundred dollars.
4. "Punchboard" means a board comprised of holes that contain numbered slips of paper (punches). A punchboard may include a seal prize, and more than one last sale prize if the punchboard is split into more than one section. A An employee or player extracts a punch from the punchboard. If the number on the punch matches a number on a flare, the player wins a prize. No punchboard may be closed unless all the top tier winning punches have been redeemed, all the punches are sold, or the punchboard has been conducted for ninety calendar days. A seal prize and a last sale prize are not considered top tier prizes. The maximum cash prize or seal prize value, including the retail price of a merchandise prize, is five hundred dollars.
5. "Seal board" means a placard containing consecutively numbered lines. A seal covers the winning number. A player buys a blank "line" and signs the player's full name on it. After all the lines are signed, the seal is removed to reveal the winning line number. An organization shall complete the retail value of prize or cash prize to be awarded and cost per play on a board. The maximum seal cash prize value or retail price of a merchandise prize is five hundred dollars.
6. "Tip board" means a placard to which jar tickets are attached. A seal covers the winning number of the top tier prize. A player may win a minor prize or, if the number of a player's jar ticket matches a number on the placard, the player signs the player's full name on the line. After all the lines are signed, the seal is removed to reveal the winning line number. The maximum number of jar tickets in a deal is four hundred. The maximum cash prize or seal prize value, including the retail price of a merchandise prize, is one hundred dollars.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-08

#### **99-01.3-06-02. Conduct and play.**

1. Deals of pull tabs must be commingled for a game as follows:



- a. Two or more deals must be placed in a receptacle and be thoroughly intermixed. When an organization's predetermined number or range of numbers of winning pull tabs remain in a game as unredeemed, an additional deal is added. An employee shall add a deal to a game if when there are about two hundred fifty pull tabs remaining and the game cannot be or is not being closed. The new pull tabs must be intermixed with the pull tabs in the receptacle before any pull tab is sold;
- b. Except for the game serial number, and a minor difference in printing that is approved by the attorney general, the deals must be identical. If deals of a game involve folded or banded jar tickets, the color of the tickets' band must be the same; however, neapolitan colored bands may be used. When a deal is added to a game, an employee shall compare the color of a deal's pull tabs to the color of the game's pull tabs. If the two colors are not the same, the deal cannot be used;
- c. A master flare or flare for at least one deal of a game must be displayed with the game and be visible to and not easily removed by a player. An organization shall retain all original flares at a site while a game is in play. If a deal has a last sale prize feature, the deal's flare must also be displayed. Only the flare of one deal of a game may have a last sale prize feature;
- d. If an indicator for adding a deal to a game has been reached and an organization does not have a deal to add, the organization shall temporarily suspend the game until it procures a deal. However, if the organization is unable to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;
- e. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter, a game may be closed anytime if all top tier winning pull tabs have been redeemed;
- f. Except as provided by subdivision g, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and:
  - (1) Fifty deals have been added to a game;
  - (2) A game's actual gross proceeds are twenty-five thousand dollars; or

- (3) A game has been in play for twenty-five consecutive calendar days; and
- g. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period.
2. An employee may not place a deal of pull tabs, club special, or coin prize board in play which has a manufacturer's or distributor's seal broken on the game's container when the game was received from a distributor. A person may not take off a deal's manufacturer's cellophane shrink wrap or break the manufacturer's or distributor's security seal on the deal's container until the deal is to be placed in a receptacle. If a distributor's or manufacturer's security seal is broken before the deal is used, an organization shall return the deal to the distributor. If a deal is packaged in two or more containers, the full deal must be placed in play at the same time.
3. These rules must be ~~posted~~ disclosed or made available to players:
- a. Restricting the play of a game to one player or a group of players is prohibited;
- b. A winning pull tab must be redeemed within a fifteen-minute time limit;
- c. If a person knowingly solicits, provides, receives, or knowingly uses any inside information, from or to any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
- d. A pull tab cannot be redeemed if it has been taken from the gaming area;
- e. To the best of the organization's knowledge, a coin prize remaining on a board relates to a winning pull tab that has not been bought. This rule is not required to be ~~posted~~ disclosed or made available to players if an organization does not conduct a coin prize board;
- f. A deal may be added to a game at any time; and



of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.

- b. The number of unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern. The information must be continually updated.
7. An organization may limit the number of pull tabs a player may buy regardless if the player is redeeming a winning pull tab.
8. An employee may not selectively pick a pull tab from a receptacle based on its game serial number or other factor. An employee shall take a handful of pull tabs from a receptacle and count off the number bought. An employee may not permit a player to physically handpick a pull tab or honor a player's request to select a specific pull tab. However, an employee may honor a player's suggestion to select a pull tab from a general area of a receptacle. In applying subsection 2 of North Dakota Century Code section 53-06.1-16, the phrase "fraudulent scheme or technique" includes an employee selecting, by any method, only certain pull tabs in a game or an employee not thoroughly intermixing pull tabs of the initial or added deals.
9. An employee may only assist a disabled player in opening a pull tab.
10. An employee shall deface a winning number or symbol of a pull tab and punchboard punch when it is redeemed. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced. An employee may not knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, has a game serial number different from the serial numbers of the deals in the game, or is defective.
11. If a player buys a set of stapled jar tickets and, before or after opening any jar ticket, determines that the set contains less than the standard number of tickets, an employee may issue the player only the number of tickets actually missing. If a player buys a set of banded jar tickets and, before breaking the band, determines that the set contains less than the standard number of tickets, an employee may issue the player a new set in exchange for the defective set. An employee may staple together the proper number of loose jar tickets of a game to sell. An employee may, at any time, sell a loose unopened jar ticket or partial set of banded jar tickets at a proportional selling price of a full set.

12. When a game is being closed, an organization may continue to conduct the game although all of its top tier and minor winning pull tabs have been redeemed. An employee may not permit a player to buy out a game except when a game is being closed. If an organization closes a game that has pull tabs unsold, it may not open or place the pull tabs back into play.
13. Unless an organization conducts a commingled game according to subdivision e of subsection 1 or closes a commingled game at least monthly, an employee who did not conduct the game shall do a monthly interim audit of the game. If the percent-of-accuracy of all the games of a site for the previous quarter was less than ninety-eight and one-half percent, an employee who did not conduct the game shall do a weekly interim audit of the games for that site for up to twelve continuous weeks or until the organization determines, resolves, and documents the cause. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general. Percent-of-accuracy is computed as cash profit divided by adjusted gross proceeds.
14. An employee shall award the last sale cash or merchandise prize to the player who actually buys the last pull tab or punch.
15. An organization may transfer a commingled game, club special, tip board, seal board, coin prize board, and punchboard from a site to another site, or rotate games among sites. If an organization discontinues gaming at a site, it may close a game. If a game is in the process of being conducted through a jar bar, the game cannot be transferred to a dispensing device. A game must be reported for the site at which it was closed and on a tax return for the quarter in which it was closed.
16. An employee may not pay, from gaming any source of funds or any other source, a prize to a player unless the player redeems an actual winning pull tab, ~~except for a last sale prize, that has a game serial number~~ from a game conducted at the site. This rule does not apply to a last sale prize.
17. Before leaving a jar bar unattended, an employee shall safeguard the games, cash, and records.
18. An organization may not publicly display a redeemed pull tab.
19. An organization or employee may not reimburse, from any source of funds, an amount to a player for play of a game that is defective or has a material incorrect posting of information described by subsection 6, unless the attorney general approves.

20. If an organization suspects or determines that a game may be defective, the organization shall temporarily suspend the game, notify the attorney general, and follow the attorney general's instructions.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-08

**99-01.3-06-03. Recordkeeping.** Records must include:

1. All redeemed and unsold pull tabs or punches for a game must be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return;
2. For a commingled game, an accounting of each deal's, shift's, or day's redeemed pull tabs, including the number by prize value, total prizes, and number of redeemed top tier pull tabs by game serial number. This accounting must be consistent and be done each time a deal is added to a game, a shift ends, or at the end of each day. If the accounting is done each time a deal is added to a game, the redeemed winning pull tabs for the period must be grouped separately and retained with all other groups of pull tabs of that game. If the accounting is done at the end of each shift or day, the redeemed winning pull tabs for each shift or day must be banded and each banded group must be dated with the date of activity and be retained in a storage container with all other banded groups of that game. For each game, there must be a daily accounting of deals added to a game, by gaming stamp and game serial numbers, and of the cash profit and bank deposit;
3. For a club special, tip board, seal board, ~~coin~~ prize board, and punchboard, and accounting of prizes, by gaming stamp number;
4. A daily accounting of starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
5. For a deal of pull tabs or ~~coin-boards~~ prize board, the ~~deal's~~ game information sheet and flare, and for a club special, tip board, and seal board, the flare, with the state gaming stamp affixed must be retained for three years from the end of the quarter in which the game was reported on a tax return;
6. A summary of ideal gross proceeds, value of unsold pull tabs or punches, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries for a quarter must reconcile to the activity reported on the tax return;

7. Record of win according to section 99-01.3-03-08;
8. Inventory records according to subsection 1 of section 99-01.3-03-09;
9. For a commingled game, the cash profit (see subdivision c of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10;
10. For a club special, tip board, seal board, coin prize board, and punchboard, the cash profit (see subdivisions e and f of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10;
11. Interim audit records according to subsection 13 of section 99-01.3-06-02; and
12. Purchase invoice or receipt documenting the cost of a merchandise prize; and
13. The count and reconciliation of deals, games, and cash bank according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-07

**99-01.3-07-01. Sports pool.** A "sports pool" is comprised of wagers paid by players for a line or square that will determine which player wins. The maximum cost per line or square is five dollars. The conduct of a sports pool is the selling of chances on the board and award of a prize. Only cash prizes can be awarded. No sports-pool board with the state gaming stamp affixed may be conducted off of a site.

1. A sports-pool board must be a ten or twelve line or twenty-five or one hundred square board and be acquired from a distributor.
2. An organization shall complete the cost per play, date of sports event, ideal prizes, and method of prize payout on a board. The method of prize payout may be at periodic intervals or the end of a game. The total payout cannot exceed ninety percent of the gross proceeds.
3. A sports pool must be conducted for a professional sporting event only. An organization shall designate one opponent along the vertical columns of numbers and the other opponent along the horizontal rows of numbers. However, if the opponents are unknown when the board is being sold, an organization shall designate identifiable conferences, divisions, or games. A purchaser of player who buys a square or line or an employee shall write the player's full name in that square or on that line. Only one player may buy a specific square or line. Except for a calendar sports pool, no tapes may be removed until all the squares or lines are sold and the opponents are designated. All the squares or lines must be sold before the sports event begins. If all the squares or lines are not sold, an organization may advance the board to another game or refund the players' money. If opponents were designated but the board is advanced to another game, an organization shall keep the same opponents or designate new opponents. When an unsold board is advanced to another game, an organization shall post a notice on a site disclosing its policy of advancing the board. Gross proceeds must be separately maintained for each board.
4. An organization may conduct a calendar or master sports pool for two or more games of the same sport. An organization shall use one board for each game and buy the necessary number of boards before selling any square. For example, if a sports pool involves sixteen games, an organization shall buy sixteen boards. A player buys the same square on each board for all the games for a maximum price of five dollars per square per game. If all the books of a calendar sports pool or all the squares of a master sports pool are not sold before the first game, an organization shall refund the players' money and void all the boards. The voided boards must be reported on the tax return as "no activity".



Otherwise, each board is reported separately on a tax return for the quarter in which the game was held.

5. A calendar sports pool must be conducted as follows:
  - a. The tapes covering the numbers assigned the horizontal rows and vertical columns of the boards must be removed to reveal the numbers. One opponent must be designated along the vertical columns of numbers and the other opponent designated along the horizontal rows of numbers. The board must state the game and its date;
  - b. Each square of each board must be assigned a consecutive number starting with number one. The numbering must be in sequence, left to right;
  - c. Each board must be printed and may be reduced in size. The quantity printed is based on the type of board. For example, for a one hundred square board, each board must be printed one hundred times. A printed board for each game and a receipt comprise a book;
  - d. A receipt must contain:
    - (1) A consecutive receipt number starting with one. A statement that the receipt number is the player's assigned square for all the boards in the book;
    - (2) Name and address of organization and name of site;
    - (3) For a licensed organization, print "office of the attorney general" and site license number. For an organization that has a local permit, print the name of the city or county and local permit number;
    - (4) Price of the book, method of prize payout and prize; and
    - (5) A detachable section containing a player's full name, address, telephone number, and matching receipt number which is retained by an organization;
  - e. An employee may not sell a book on a site where another organization is licensed or has a local permit unless the employee is granted permission by the lessor and other organization;
  - f. A player may not choose a particular book to buy. When a book is sold, a receipt's detachable section is completed. After a player

buys a book, the player may see the numbers assigned that player's square on the boards; and

g. A board must be posted at the site on the day that the related game is held.

6. A master sports pool must be conducted as follows:

a. An organization shall post a twenty-five or one hundred square master board at a site. Each square must be assigned a consecutive number starting with number one. The numbering must be in sequence, left to right. A master board must include:

(1) Name of organization;

(2) The games;

(3) Price of participating, number of games, method of prize payout and prize; and

(4) A statement that the scores assigned to the players' squares for each game will be posted at the site five days before the game.

b. A player shall buy a square and write the player's full name and telephone number in it.

c. A sports-pool board with the state gaming stamp affixed must be posted at a site five days before the game related to that board is held.

7. The winner of a board is determined, at the end of each payout period:

a. For a ten line board, by determining the line that is assigned the last number (one's position) of the combined score of both opponents.

b. For a twelve line board, by determining the line that is assigned the number of the round in which the boxing match ended.

c. For a twenty-five and one hundred square board, by determining the square at the juncture of the horizontal row and vertical column which relate to the numbers (one's position) of each opponent's score.

8. An organization shall make a good-faith effort to contact a winning player to award a prize. If a prize is unclaimed for thirty days following the

notification or a player attempts to falsify or falsifies a record of win, the prize is forfeited.

9. An employee shall record a prize on a board or a register according to section 99-01.3-03-07. If a prize is recorded on a board, the board must contain the information required by section 99-01.3-03-07.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-09

#### **99-01.3-07-02. Recordkeeping.**

1. For each sports-pool board, records must include:
  - a. The sold board indicating the winning square or line. A board must be retained for one year from the end of the quarter in which the activity was reported on a tax return. However, if an organization uses a board as a prize register or record of win, the board must be retained for three years from the end of the quarter in which the game was reported on a tax return;
  - b. The daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
  - c. The type of professional sport and amount of each prize;
  - d. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sports-pool boards conducted during a quarter must reconcile to the activity reported on a tax return; and
  - e. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08.
2. Inventory records according to subsection 1 of section 99-01.3-03-09.
3. The total receipts, less a cash prize, must be deposited according to section 99-01.3-03-10.
4. The count and reconciliation of sports-pool boards according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-08

### 99-01.3-08-02. Table, drop box, cards, and dealing shoe.

1. If there is more than one table at a site, a table must have a number. A table playing surface must display no more than seven separate betting spaces and these statements:

BLACKJACK PAYS 3 TO 2

and

DEALER MUST STAND ON 17 AND MUST DRAW TO 16

2. A table must have a drop box that meets the specification of subsection 5 of section 99-01.3-15-02. If there is more than one table at a site, a drop box must have a number matching the table number. A drop box must have a money plunger which must remain in the slot unless the plunger is used to insert currency or forms.
3. The cards must be four, six, or eight complete decks and be dealt from a dealing shoe located at a dealer's left. The cards must be the same size, shape, design, and be jumbo-faced. However, if a mechanical or electronic hole card reader is used on a table, cards that are not jumbo-faced may be used provided that the organization has received approval from the attorney general. Approval must be based on the attorney general's evaluation of the clarity of the cards on videotape or electronic video storage for the table. The color of the backs of all decks must be one predominate color, or one-half of the number of decks must be one predominate color and the other decks a different predominate color. The design on the back of each card must be identical.
4. A dealing shoe must ~~have a face plate, base plate, and sides and~~ hold four or more complete decks of playing cards.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### 99-01.3-08-03. ~~Chips~~ Casino chips.

1. A wager and tip must be made with chips. If an organization accepts a ~~five~~ twenty-five dollar wager, it shall provide ~~five~~ twenty-five dollar chips to players for their optional use. Chips may be issued in values of fifty cents, one dollar, two dollars, ~~and five dollars, and twenty-five dollars.~~ An ~~Except for a commemorative chip, an~~ organization may not use a different ~~chips~~ chip of the same value at a site.

2. Each chip must be ~~round in shape~~, be one and nine-sixteenths inches [39.62 millimeters] in diameter and be permanently impressed, engraved, or imprinted on one side with an organization's name and on the other side with the value of the chip. The name may be represented by a unique identification that differentiates an organization's chips from all other organizations' chips. If a site had twenty-one gross proceeds averaging ten thousand dollars or more for two consecutive quarters and this level of activity is expected to continue or an organization installs a video surveillance system at a site, regardless of the value of wagers accepted at the site, the chips must meet the specifications of subsection 3.
3. ~~As required, each~~ Each value of chip must have the following prescribed primary color. ~~Along with the primary color~~ Except for a fifty cent chip, a chip also must have one or two contrasting secondary colors as edge spots. Edge spots must be visible on the perimeter of both sides of a chip and on the chip's circumference. An organization may not use a secondary color on any value of chip that is identical to the primary color used by the organization on another value of chip that results in a reversed combination of primary and secondary colors between the two values of chips. The primary colors and edge spots must be:
  - a. Fifty cent chip - mustard yellow which is the color classified as 5Y 7/6 on the Munsell system of color coding. This chip has no edge spots.
  - b. One dollar chip - white which is the color classified as N 9/ on the Munsell system of color coding. A one dollar chip must have four solid edge spots and each edge spot must be one-half of one inch [12.7 millimeters] in width.
  - c. Two dollar chip - pink which is the color classified as 2.5R 6/10 on the Munsell system of color coding. A two dollar chip must have four split edge spots and each edge spot must be 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 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.
  - d. Five dollar chip - red which is the color classified as 2.5R 4/12 on the Munsell system of color coding. A five dollar chip must have six solid edge spots and each edge spot must be one-quarter of one inch [6.35 millimeters] in width.
  - e. Twenty-five dollar chip - green which is the color classified as 2.5G 5/12 on the Munsell system of color coding. A twenty-five dollar

chip must have eight white solid edge spots and each edge spot must be five thirty-seconds of one inch [4.06 millimeters] in width or, if the center of the chip is embossed in gold or inlaid with a coin, the chip must have three white solid edge spots and each edge spot must be fifteen thirty-seconds of one inch [12.18 millimeters] in width.

f. One hundred dollar chip - black which is the color classified as N 2/ on the Munsell system of color coding. A one hundred dollar chip must have four white triple split edge spots and each edge spot must be 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 one-sixteenth of one inch [1.52 millimeters] in width. This chip is used in the game of paddlewheels.

4. An employee shall safeguard chips ~~by placing them~~ in a safe storage area place or on a table with a locking cover. If a table has been opened and no ~~dealer~~ employee is stationed at it, an employee shall remove or secure the chip tray with a locking cover.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

**99-01.3-08-04. Video surveillance system.** If a site had twenty-one gross proceeds averaging ten thousand dollars or more per quarter for two entire consecutive quarters, this level of activity is expected to continue, and wagers exceed two dollars, an organization shall have a video surveillance system operational at the site within forty-five days from the end of the second quarter. However, for a site with seasonal activity, this level of activity is based on the average gross proceeds of the active quarters within the fiscal year July first through June thirtieth. A level of activity is based on a site's recent historical experience, but not earlier than the previous fiscal year, regardless of which organization conducted twenty-one at the site. If an organization conducts twenty-one at a newly acquired site that has a level of activity requiring a video surveillance system, it shall have the system for a table operational within forty-five days of conducting twenty-one or limit wagers to two dollars until the system is operational. A system must be operational for each twenty-one table that is regularly located on a site, regardless of how infrequent a table is used or the value of wagers accepted at the table. A temporary table that is brought onto a site for fourteen or fewer consecutive days for a special event according to subsection 4 of section 99-01.3-01-02, but for not more than two events per quarter, does not need a system. An organization shall:

1. Install a system that meets these specifications:

- a. A super VHS (S-VHS) real time video cassette recorder must be used. It must be secured in a locked cabinet or area, plugged into an outlet that cannot be switched off, and be programmable with a seven-day memory backup. A recorder must have a built-in or separate time and date generator that displays the time and date on videotape without significantly obstructing a recorded picture. A recorder used to review a videotape must have forward and reverse frame-by-frame and high-speed scanning capability and may be operable by a wireless remote control. However, an organization may use a digital video recorder with a removable or external hard disk drive;
- b. A super VHS or high resolution color camera that has four hundred or more active lines of horizontal resolution must be used. A camera must have a signal to noise ratio, with the automatic gain circuitry off, of forty-five decibels or better. A camera must be positioned above the center of a table and record gaming activity from the dealer's perspective. A camera must be plugged into a surge protector and use an outlet that cannot be switched off. A camera must be protected by a slotted or clear dome. An automatic iris is optional;
- c. A camera lens must have an f-stop rating of f-1.2 or better, be color-corrected and have a format size equal to or greater than the format size of a camera. A lens may be fixed or variable focus. A lens must have a field of view to record the face of a dealing shoe, all betting spaces, discard holder, chip tray, currency plunger, and table number;
- d. A color video monitor with a super VHS connection that produces lines of horizontal resolution that equal or exceed the number of active lines of horizontal resolution that a video camera is outputting. A monitor's screen must measure at least thirteen inches [330.2 millimeters] diagonally;
- e. For a super VHS color camera, super VHS YC or coaxial video cable must be used. For a high resolution color camera, coaxial video cable must be used. The cable must meet these specifications:
  - (1) If the length of a cable is one hundred linear feet [30.48 linear meters] or less and the cable will not be flexed, exposed outside a building, or constantly moved, the center conductor must be stranded or solid pure copper material. Otherwise, the center conductor must be stranded pure copper material.

- (2) The shield must be braided pure copper material. The dielectric must be foam material. A cable must be rated for seventy-five ohms of impedance. If a cable is to be placed in a return air system, the jacket must be teflon or other accepted fire-rated material; and
    - f. Super VHS (S-VHS) videotapes must be used.
2. Buy or lease qualifying items. Additional allowable expense funds may be used for only these qualifying items ~~which are bought for the initial installation:~~
  - a. Super VHS video cassette recorder, time and date generator, and locking vented enclosure;
  - b. Super VHS or high resolution color camera with a fixed or zoom lens and dome;
  - c. Super VHS or high resolution color video monitor;
  - d. Super VHS YC or coaxial video cable;
  - e. Super VHS videotapes and tape storage cabinet;
  - f. Table number and site identification;
  - g. Installation and maintenance of equipment, including lighting fixture;
  - h. In-line video cable amplifier, surge protector, video printer, tape rewinder, battery backup, and tape eraser; and
  - i. Lease payment and interest expense on a financing loan.
3. If an organization conducts twenty-one at more than one site, a table must have a site identification. A site identification and any table number must be visible on videotape.
4. ~~If a A playing surface is installed on or after July 1, 2000, it must be a bright green playing surface.~~ Only maroon and black jumbo-faced playing cards may be used.
5. If a recorder or camera for a table is not properly operating or not producing an unobstructed view and clear picture of cards, currency, and chips and not repaired or remedied within seventy-two continuous hours, either close the table or limit wagers to two dollars at all the tables at the site until the equipment is repaired.



6. Maintain a clean dome and a proper field of view on the playing surface.
7. Authorize only a gaming or shift manager or an independent person to:
  - a. Access a recorder, camera, and stored videotapes;
  - b. Start and stop a recorder to record a table when chips are first made available for use on the table and continue recording until the table is permanently closed for the day; and
  - c. Change a videotape in a recorder for a table at the beginning, during, or at the end of a day's activity, regardless if the authorized person is a dealer or wheel operator at the site. An organization may use two real time recorders in sequence to record a table's activity that exceeds the recording capability of one tape. If two recorders are used for one table, their separate recordings for a day's activity must overlap by ten minutes.
8. Retain a videotape in a safe storage place for thirty days.
9. ~~If the percent-of-hold for twenty-one of a site for the previous quarter was twenty-one percent or more, on~~ On a monthly weekly basis a qualified person shall review one hour of twenty-one and paddlewheel activity multiplied by the number of tables used and document the review. ~~If the percent-of-hold for twenty-one of a site for the previous quarter was at least sixteen percent but less than twenty-one percent, on a weekly basis a qualified person shall review one hour of activity multiplied by the number of tables used and document the review. Otherwise, on a weekly basis a qualified person shall review two hours of activity multiplied by the number of tables used and document the review. Percent-of-hold is computed as adjusted gross proceeds divided by gross proceeds. If paddlewheels are conducted on a site, on a weekly basis a qualified person shall review one hour of activity of the table and document the review. A person may not review a videotape of a twenty-one or paddlewheel table on which the person dealt or was a wheel operator.~~
10. Use the attorney general's current recordkeeping system unless approval is obtained from the attorney general for use of another system. An organization shall track a dealer's and wheel operator's percent-of-hold performance. Percent-of-hold is computed as adjusted gross proceeds divided by gross proceeds.
11. Limit its purchase or lease of a camera, lens, cable, camera dome, time and date generator, and installation, including moving a camera to another location, to a vendor approved by the attorney general. However, an organization may buy or lease a qualifying item from another

organization provided the equipment meets the specification of subsection 1. If an organization acquires video surveillance equipment at a new site from another organization or moves a camera to another location at the site, the organization shall provide the attorney general with a sample tape to evaluate. An organization shall defer remitting at least fifty percent of the cost or lease price of this equipment to a vendor until the attorney general approves the clarity of the videotape for a table. A vendor shall provide the attorney general with a sample tape to evaluate. If an organization moves a table to a different location at a site, the organization or vendor shall, within fourteen days, provide the attorney general with a sample tape to evaluate. If the quality of the sample tape is not satisfactory, an organization and vendor shall resolve the deficiency.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10, 53-06.1-11

**99-01.3-08-05. Distributing and removing chips.**

1. ~~Except as prescribed by subsection 8, a~~ A fill slip must be used to distribute ~~twenty-one or paddlewheel~~ casino and betting chips (~~betting and payout~~) from a chip bank to a table and a credit slip to return chips from the table to the chip bank. An organization may not transfer or exchange chips directly between two tables. An organization shall use a fill and credit slip to temporarily transfer a chip tray to or from a table and jar bar. Access to a fill and credit slip must be restricted to an authorized person. The same fill and credit slip format may be used for both twenty-one and paddlewheels.
2. A fill slip and credit slip must be separate forms. Fill and credit slips must be mechanically or electronically consecutively prenumbered two-part carbonless forms, be used in sequential order, and be all accounted for. Originals and copies of voided fill and credit slips must be marked "VOID" and be initialed by the preparer.
3. A fill slip must be prepared by a chip bank cashier, pit boss, or shift manager. A credit slip must be prepared by a dealer, wheel operator, pit boss, or shift manager. The original and copy of a fill and credit slip must contain:
  - a. Reference to twenty-one or paddlewheels, site, date and time (including a.m. or p.m.), and any a table number for twenty-one or "PW" for paddlewheels;
  - b. Quantity and total value of chips, by value, and grand total value of chips; and

- c. For a fill slip, the initials of a chip bank cashier. However, if a dealer is the only employee on duty, this person shall initial the fill slip. For a credit slip, the initials of a dealer or wheel operator.
4. After preparation of a fill slip, a chip bank cashier shall retain the original. However, if a dealer is the only employee on duty, this person shall retain the original. After preparation of a credit slip, a dealer or wheel operator shall deposit the original in a drop box.
5. If an organization has a shift manager or authorized employee on duty who is not presently dealing or operating a paddlewheel, this person shall verify the quantity and value of the chips, initial the original part of the fill or credit slip, and transfer the copy of the fill slip with the chips to a table, or transfer the copy of the credit slip with the chips to a cashier.
6. A dealer or wheel operator shall verify the information on the copy of a fill slip and, if correct, initial and deposit it in a drop box. A cashier shall verify the information on the copy of a credit slip and, if correct, initial and retain it. However, if a dealer is the only employee on duty, the dealer shall retain the copy of a credit slip.
7. As an option, an organization may have:
  - a. A dealer or wheel operator initial the original part of a fill slip before it is retained by a chip bank cashier; and
  - b. A chip bank cashier initial the original part of a credit slip before it is retained by a dealer or wheel operator.
- ~~8. An organization shall use a credit/cash transfer slip and comply with procedures prescribed by the attorney general to:
  - a. Transfer a paddlewheel payout chip from a twenty-one table to the chip bank cashier and transfer cash from the paddlewheel cash bank to the twenty-one table; and
  - b. Transfer a twenty-one chip from a paddlewheel table to the chip bank cashier and transfer cash from the twenty-one cash bank to the paddlewheel table.~~

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-08-06. Chip bank services.**

1. An organization shall sell casino chips at a table only for cash, no checks. ~~However, a paddlewheel payout~~ A chip may be exchanged for a ~~twenty-one chip at a twenty-one table and a twenty-one chip may be exchanged for a paddlewheel betting chip at a paddlewheel table.~~ Checks may be cashed by a cashier. Cash for chips sold must be kept separate from all other cash until it has been counted. Only a two-person audit team may access a drop box before the drop box cash count.
2. An organization shall redeem a chip for cash at the value for which it was sold, except when a chip was obtained or used unlawfully. An organization shall adopt a procedure on redeeming a player's chips that ensures that redeemed chips are separated, by value, and counted accurately. A cashier may use a rack to account for one or more sets of twenty chips of the same value. If an organization discontinues twenty-one or paddlewheels at a site, it shall redeem its chips, at its business office or active site, for thirty days thereafter. An employee shall redeem a dealer's and wheel operator's tips through cash on hand. Unless a table has a video surveillance system, a dealer and wheel operator shall redeem the actual chips received as tips. This rule does not prohibit pooling of tips.
3. An employee may not take any chip, including tips, to a location outside the gaming area of a site. A dealer shall redeem tips before leaving a site.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

**99-01.3-08-07. Opening a table and accepting cash and ~~paddlewheel~~ payout chips.**

1. When playing cards are brought to a table, a dealer shall first approve all decks of cards. Decks must be sorted into sequence, by suit and the back of each card inspected to assure that all cards are present and none are marked, taped, bent, crimped, cut, or shaved. After approval, a dealer shall spread the cards face upwards on a table, by deck, according to suit and in sequence within the suit for review by the first player. After a player's review, the cards must be shuffled. If cards are removed from a table for any reason, they must be stored in a safe place and a dealer shall comply with this subsection when the cards are brought back to the table. If a table has been opened and no dealer is stationed at it, a dealer shall remove the cards from the table or place the cards in a discard holder or dealing shoe and securely cover them.
2. A dealer or shift manager shall inspect each dealing shoe before each day's activity. If a shoe is removed from a table for any reason, it must

be stored in a safe place. If a table has been opened and no dealer is stationed at it, a dealer shall securely cover the shoe or remove the shoe from the table.

3. A dealer, upon receiving currency or ~~paddlewheel payout~~ chips from a player ~~at a table~~, shall:
  - a. If an organization has not installed a video surveillance system at a site, spread the currency on top of a table in full view of the player and shift manager and state the amount of currency in a voice loud enough to be heard by all players at the table. A dealer shall then take chips from a chip tray, equal in value to the currency, place the chips in a stacked manner in the inner table area with only the dealer's right hand, fan the chips, push the chips to the player and place the currency in a drop box; ~~and~~ or
  - b. If an organization has installed a video surveillance system at a site, spread each bill of currency face down and flat, in sequence of denomination, in the inner table area, perpendicular to a chip tray, and momentarily move the dealer's hands away from the currency so the currency is within a camera's view. A dealer shall then take chips from a chip tray, equal in value to the currency, place the chips in a stacked manner in the inner table area with only the dealer's right hand, fan the chips, and momentarily move the dealer's hands away from the chips so the chips are within a camera's view. A dealer shall then restack the chips, and push the chips to a player, and place the currency in a drop box.
  - c. If a ~~paddlewheel payout~~ chip is received from a player to be exchanged for ~~a twenty-one chip~~ smaller value chips, the dealer shall place the payout chip in the inner table area at the dealer's left, sort, stack, and fan the chips. If the table has a video surveillance system, a dealer shall momentarily move the dealer's hands away from the chips so they are within a camera's view. A dealer shall then take twenty-one chips from the chip tray, equal in value to the ~~payout~~ chips, and fan the chips. If the table has a video surveillance system, a dealer shall momentarily move the dealer's hands away from the ~~twenty-one~~ chips so they are within a camera's view. A dealer shall then restack the chips, push the chips to the player, and place the ~~payout chips~~ exchanged chip in the chip tray.

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-08-08. Shuffle and cut of the cards.**

1. Before starting play, and after each shoe of cards is dealt, a dealer shall, in front of the players, thoroughly shuffle all the cards. Then, a dealer shall offer the stack of cards, with backs facing away from the dealer, to a random player to be cut. A player shall cut the cards by placing a cutting card in the stack at least ten cards in from either end. A dealer shall rotate the opportunity to cut the cards among all the players. If all players decline, a dealer or pit boss shall cut the cards. For a site with a video surveillance system, an organization shall standardize its dealers' procedures for shuffling and cutting cards and may use one or more standard shuffling methods.
2. A dealer shall take all the cards in front (~~towards~~ toward the dealer) of a cutting card and place them in back of the stack or take all the cards in back (away from the dealer) of the cutting card and place them in front of the stack. The cutting card must be at the bottom of the stack. A dealer shall then insert an indicator card about fifty to one hundred cards from the bottom of the stack. The stack is inserted into a dealing shoe facedown. When an indicator card appears at the face of a shoe and enough cards have been dealt to complete the present hand, a dealer shall reshuffle the cards. A dealer may reshuffle the cards only if the indicator card appears or a table has been temporarily closed with no dealer stationed at the table; and it is reopened.

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-08-09. Betting.**

1. An original wager must be an even dollar amount ranging from one dollar to ~~five~~ twenty-five dollars. A wager of one dollar must be accepted ~~and an.~~ An organization may establish a maximum wager for each table. If all the tables at a site do not have the same betting limit, ~~the limit must be posted.~~ ~~Otherwise,~~ a plaque must be placed on top of a table indicating the maximum wager for the table. A wager that exceeds the maximum wager is valued at a table's maximum wager and the excess must be returned to a player. An organization shall post and announce a change in the maximum wager at a table with adequate notice to a player.
2. An original wager is the amount bet per hand before the first card is dealt and excludes tip betting. After the first card has been dealt, no original wager or tip bet may be changed. A separate wager may be a split, double-down, insurance bet, and tip bet.
3. Splitting is permitted on any pair or any two 10-count value cards. A player is allowed a maximum of four hands per betting space. A player's

right-hand card in a split must be played to completion before the adjacent split hand is dealt a second card. A player shall take at least one card on a split hand. A wager on each hand must equal the original wager. Split aces draw only one card each. A two-card twenty-one after a split is not a natural twenty-one.

4. Doubling-down is permitted on the first two cards dealt to a betting space or the first two cards of a split hand, except on split aces. A An organization may require a double-down wager to equal the original wager or allow a double-down wager must to be equal to or less than the original wager. Only one additional card is dealt.
5. An organization may permit insurance betting except on a tip wager. An insurance bet is placed when a dealer's faceup card is an ace and it must be one-half the original wager. The payoff on a winning bet is two to one.
6. An organization may permit tip betting and doubling-down on tip bets. A tip bet is made when the original wager is made by placing a chip outside a betting space, but with the chip touching the lower left edge of the betting space, from a dealer's perspective. A betting space is limited to one tip bet. A tip bet does not have to equal an original wager and may range from fifty cents up to a table's maximum wager, but may be limited to less than the table's maximum wager at an organization's option. A doubled-down tip bet must equal the original tip bet. If a player's hand wins, a tip bet is paid off at an equal amount and the tip bet and payoff are placed in a dealer's tip receptacle. If the dealer's hand wins, a tip bet is placed in the chip tray. If a player's and dealer's hands tie, a tip bet is a standoff (push).
7. If a player's wager consists of two or more values of chips, a player shall neatly stack the lowest value chip on top of the highest value chip. If the chips are improperly stacked, a dealer shall tell the player and either the dealer or player shall properly stack the chips.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

#### **99-01.3-08-11. Playing.**

1. After the first two cards have been dealt to each betting space and if a dealer's faceup card is an ace, the dealer shall ask the players if they desire to make an insurance bet. A player shall make an insurance bet by placing a chip on the insurance line of the playing surface. A dealer shall reposition the chip 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. A dealer shall then announce "insurance bets are closed". However, if a player who has been dealt a natural twenty-one (blackjack) desires to make an insurance bet and does not desire to double-down, a dealer may, at an organization's option, do an even money payoff rather than having the player place an "insurance" bet. To exercise this option, a dealer shall state "even money" and immediately do a chip payoff to a player equal to the player's original wager. This even money payoff must be done according to subdivision a of subsection 16. A dealer shall then place the player's cards in a discard holder. For this option, a tip bet is a standoff (push). This rule does not apply if an insurance bet is not permitted.

2. A dealer may announce the dealer's faceup card one time to all the players at a table. Then if the dealer is using the hole-card-no-peek method of dealing, the dealer's faceup card is an ace or a ten-count card, the dealer is using a mechanical or electronic hole card reader and special cards, and the dealer's hand is a natural blackjack, the dealer shall play the dealer's hand as prescribed by subdivision c or d of subsection 10. Otherwise, a dealer shall, beginning from the dealer's left and for each player's hand, prompt a player to indicate whether the player desires to split or double-down, or both. As a prompt, a dealer may announce the point total of each player's hand. For splitting a hand, a player shall place an additional wager, equal to an original wager, horizontal to the original wager. For doubling-down on an original wager or tip bet, a player shall place a chip vertical to the wager. A player may not double-down on a tip bet unless the player also doubles-down on the original wager. If a dealer is unsure of a player's intent, the dealer shall ask the player and properly reposition a chip.
3. If a player has split or doubled-down, or both, a dealer shall play each hand as follows:
  - a. When a player places a wager for a split, a dealer shall split the cards side by side. If a player has also placed a tip bet, a dealer shall assign and reposition the tip bet to the split hand located at the foremost left of a betting space, from the dealer's perspective. Each split hand must be played separately. If aces are split, one additional card must be dealt face upwards to each of the hands and placed at a right angle to the first card dealt.
  - b. A doubled-down hand must be dealt one additional card face upwards and placed at a right angle to the first two cards dealt. However, if a table does not have a video surveillance system, the card may be placed beneath a player's original wager.



4. A dealer may not take a hit card from a dealing shoe nor may a dealer bypass a player unless the player has first indicated the player's request for a hit card or to stand by a distinct hand signal.
5. As a player indicates to stand or draw a hit card, other than on a hand that has split aces or a double-down, a dealer shall deal face upwards an additional card or cards as the player requests. A player is responsible for correctly computing the total card count of the player's hand.
6. If a player did not split, double-down, or place an insurance bet, and busts (a player's total card count exceeds twenty-one), the player loses an original wager and any tip bet. A dealer shall immediately collect and place a player's chips, including any tip bet, in a chip tray and the cards in a discard holder.
7. If a dealer's faceup card is not an ace or a ten-count card and a player split or doubled-down and busts, the player loses the wager for that split or double-down hand and any tip bet ~~(including any double-down bet)~~ assigned to it. A dealer shall immediately collect and place a player's chips, ~~including any tip bet and double-down bet,~~ in a chip tray and the cards in a discard holder.
8. If a dealer's faceup card is an ace or a ten-count card and a player split, doubled-down, or placed an insurance bet and busts, the dealer shall gather the cards of that hand and place them outside the betting space. Then, a dealer shall reposition the player's split and or doubled-down wagered chips, in the same betting position, on top of the player's cards of that hand. A tip bet for such a split or double-down hand that busts is lost. A dealer shall immediately place the tip bet chips in a chip tray.
9. If a dealer's faceup card is not an ace or a ten-count card and all players bust, a dealer shall end the round. If a dealer's faceup card is an ace or a ten-count card and all players bust, and no player split, doubled-down, or placed an insurance wager, a dealer shall end the round.
10. If the decisions of all players have been carried out, 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 (no-hole-card method). However, for the no-hole-card method, a dealer ~~may not~~ shall remove the dealer's second card from a dealing shoe ~~until the dealer first announces that it is~~ and, without looking at the value of the card, place it beside the dealer's first card. Then, a dealer shall announce the total card count of the two cards. A dealer shall play the dealer's hand as follows:
  - a. If a dealer's faceup card is an ace and the dealer's hand is not a natural twenty-one, the dealer shall immediately, starting with the

player to the dealer's right and moving left around the table, collect all the players' insurance bet chips, with the dealer's right or left hand, in a sweeping motion, and place them in a chip tray. A dealer may not use the right and left hand at the same time. Then, for all the players' busted hands that have been split, doubled-down, or both, a dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands, and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's insurance bet chips and busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.

- b. If a dealer's faceup card is a ten-count card and a dealer's hand is not a natural twenty-one, for all the players' busted hands that have been split, doubled-down, or both, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.
- c. If a dealer's faceup card is an ace, the dealer's hand is a natural twenty-one, and a player has placed an insurance bet, the player

- wins the insurance wager at the rate of two to one. A dealer shall do the payoff procedure according to subsection 15 or 16. However, if a player's original hand also is a natural twenty-one, subdivision d also applies.
- d. If a dealer's faceup card is an ace or a ten-count card and the dealer's hand is a natural twenty-one, the organization wins all original wagers and original tip bets, unless a player's original hand also is a natural twenty-one which results in a standoff. All other players lose.
  - e. If a player has doubled-down or split against a dealer's faceup card of an ace or a ten-count card and the dealer's hand is a natural twenty-one, only the player's original wager is lost unless the player's original hand also is a natural twenty-one which results in a standoff. All separate splitting and doubling-down wagers are voided. A dealer shall return the chips of the separate wagers to the players.
  - f. If the count of a dealer's hand is sixteen or under, the dealer shall draw a hit card until the count exceeds sixteen. An additional card must be dealt face upwards to the immediate right of a dealer's first two cards dealt, from the dealer's perspective, and the dealer shall announce the total card count.
  - g. If the count of a dealer's hand exceeds sixteen but does not exceed twenty-one, the dealer shall stay (not draw a hit card). If a dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, twenty, or twenty-one can be obtained by counting the ace as an eleven, a dealer shall value the dealer's hand as such and stay. A dealer shall announce the final total card count of the dealer's hand.
  - h. If a dealer's hand busts, the remaining players with active hands win.
11. If a player's original hand is a natural twenty-one 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. A dealer's chip payoff on a player's wager may occur immediately or when the dealer, in the order of hands, comes to that player's hand.
12. A wager is won or lost by comparing the total card count of each player's hand to the dealer's hand. A dealer or player with the highest total card count wins. Wagers, including tip bets, are paid off at an equal amount according to subsection 15 or 16. All ties are a standoff - no payoff is made, including on a tip bet.

13. If a player's hand loses against a dealer's hand, an organization wins any tip bet, ~~including any double-down bet~~. A dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of adjacent losing hands, ~~including any tip bet and double-down bet~~, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. A dealer may, at an organization's option that is consistently applied at a site, collect the chips of losing hands, ~~including any tip bet and double-down bet~~, with only the dealer's right hand, on a hand-by-hand basis. When a tie hand is reached, the dealer shall recognize that hand with a tap on the tabletop and announce that it is a push. When a winning hand is reached, a dealer shall place any previously collected chips in a chip tray and do the payoff procedure for adjacent winning hands according to subsection 15 or 16. When a losing hand is again reached, the dealer shall repeat the collection and payoff procedure until all losing wagers have been collected and all winning hands have been paid. The dealer shall then collect all the remaining cards according to subsection 17.
14. If a player's hand wins against a dealer's hand and the player placed a tip bet, the dealer wins the tip bet and ~~any double-down bet~~ and the one-to-one payoff from a chip tray according to subsection 15 or 16.
15. If a player's hand wins against a dealer's hand and a table does not have a video surveillance system, the payoff procedure is:
  - a. Normal hand. A payoff chip must be placed beside the original wagered chip in a betting space.
  - b. Split hand. The payoff chip must be placed beside the wagered chips in a betting space.
  - c. Double-down hand. The payoff chips must be placed beside the two wagered chips in a betting space.
  - d. Insurance bet. A payoff chip must be first placed beside the insurance bet chip, fanned, then placed on top of the insurance bet chip and the chips pushed to a player.
  - e. Natural twenty-one. The payoff chips must be pyramided with the higher value chip placed beside the original wagered chip in a betting space and the smaller value chip placed on top over the center of the other two chips.
  - f. Tip bet. A payoff chip must be placed beside the tip bet chip and any double-down chip in the inner table area. Then, a dealer shall place the chips directly in a tip receptacle.

16. If a player's hand wins against a dealer's hand and a table has a video surveillance system, the payoff of each winning hand must be done on a hand-by-hand basis. The payoff procedure is:
- a. A dealer shall fan all of a player's wagered chips toward the dealer or side with only the dealer's left hand. A dealer may, at an organization's option that is consistently applied at a site, fan all of a player's wagered chips toward the dealer or side with only the dealer's right hand. However, for a site that has a pit boss on duty and the organization requires a double-down wager to equal the original wager, a dealer may, for a player ~~that~~ who has placed a split bet or ~~doubled-down~~ double-down bet, or both, fan only one of the player's ~~winning wagers~~ stacks of wagered chips. A dealer shall reposition a tip bet chip ~~and any double-down chip~~ in the inner table area with the dealer's left hand and fan the chips. A dealer may, at an organization's option that is consistently applied at a site, fan all the players' tip bets and double-down chips after the payoff procedure has been done on all winning players' hands. However, if a player's bet exceeds five dollars, the dealer shall separate the player's chips, by value, fan them in sets of five chips, and then fan any remaining chips. A dealer shall, with the dealer's right hand, take a chip from a chip tray, equal in value to the player's wagered chips (not tip bet chips), place the payoff chip in a stacked manner beside the wagered fanned chips, fan the payoff chips toward the dealer or side, and move the dealer's hands away from the chips. However, if the prize payoff exceeds twenty casino chips of the same value, the dealer may use a rack to account for one or more sets of twenty chips and fan the remaining chips. A dealer shall repeat this procedure for each separate winning hand.
  - b. After the payoff procedure has been done on all winning players' hands and the tip bet chips ~~and any double-down chips~~ have been fanned, a dealer shall, with the dealer's right hand, take a chip from a chip tray of the same value as the tip bet chip ~~and any double-down chip~~, place the payoff chip in a stacked manner beside the fanned chips, and fan the payoff chips. A dealer shall repeat this procedure for each separate winning tip bet. Then, a dealer shall move the dealer's hands away from the chips. After a dealer has picked up the cards according to subsection 17, the dealer shall place the chips directly in a tip receptacle.
17. At the end of a round of play, a dealer shall pick up all the cards remaining on the playing surface so that they can be played back to recreate each hand, starting with the player to the dealer's right and moving to the left around the table. After the cards have been collected in a sweep or hand by hand, a dealer shall pick up the dealer's cards against the top of the players' cards and place them in a discard holder.

18. If a table has a video surveillance system, a dealer's shift ends, and the dealer:
- a. Does not desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view. A dealer shall then take the tip receptacle and leave the table.
  - b. Does desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall take all the chips out of the tip receptacle. A dealer shall place the chips in the inner table area at the dealer's left; sort, stack, and fan only the chips to be exchanged; take chips from a chip tray equal in value to the fanned chips; place the replacement chips at the dealer's right; sort, stack, and fan the chips, momentarily move the dealer's hands away from the chips so the chips are within a camera's view; place the exchanged chips in a chip tray; then place the replacement chips and unexchanged chips in a tip receptacle. A dealer shall then momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view, take the tip receptacle, and leave the table. As an option, a dealer for the next shift may exchange the present dealer's tips.
19. A dealer may not allow a player to touch a card.
20. A dealer may not switch or remove a player's card or chip, pay on a standoff, or do anything to alter a fair and legal outcome of a betting hand.
21. An organization may adopt a policy to allow a dealer, when a player leaves a table, to exchange two or more of the player's casino chips for higher value chips provided that the dealer first asks the player's permission, the player agrees, and the dealer announces the value of chips being exchanged.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

**99-01.3-08-13. Posting Disclosure.** These rules and notice must be posted disclosed or made available to players:

HOUSE RULES

Betting limit

Use Hole-Card-No-Peek method of dealing

- or -

Use No-Hole-Card method of dealing (Choose one when posting)

PLAYER RULES

Must compute the card count of the player's hand  
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 payoff on tie counts  
Splitting on any pair and 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, and  
Double-down bet must equal the original wager

- or -

Double-down bet may be equal to or less than the original wager (Choose one)

Insurance not permitted

- or -

Insurance permitted - pays 2 to 1 (Choose one when posting)

Tip betting permitted

- or -

Tip betting not permitted (Choose one when posting)

Doubling-down on tip bets permitted - must be equal to the original tip bet

- or -

Doubling-down on tip bets not permitted (Choose one when posting)

#### NOTICE

If a player person knowingly uses a fraudulent scheme or technique to cheat or skim involving twenty-one, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-10

#### **99-01.3-08-14. Drop box cash count.**

1. A drop box that has been used must be removed from a table by the end of the day's activity. If a drop box is removed from a table and the cash is not counted immediately, the drop box must be transported by the shift manager and, if there is more than one employee on duty, escorted by an employee to a safe storage place. The cash must be removed from the drop box before the drop box can be used for another day's activity. An empty drop box may be stored on a table or in a safe storage place.
2. A drop box must be opened by a two-person count team. The persons must be independent of each other. A count team may be an

independent person, including a representative of a financial institution, and a gaming employee; two representatives of a financial institution; two nongaming employees; or two gaming employees provided they did not conduct games at the same site on the day of the gaming activity and day of the count. One of these two gaming employees may have conducted games at the site associated with the drop box cash. A count team may not be two persons who have a direct supervisor and subordinate relationship or include an employee of a lessor unless this employee conducts games as an employee of the organization. A count team member may not be a common household member, spouse, child, parent, brother, or sister of the other count team member.

3. The key to the lock securing the contents of a drop box must be controlled by one count team member who may not access the drop box unless both count team members are present. If there are two separate locks that secure the contents of a drop box, the key to the second lock must be controlled by the other count team member.
4. Each person shall independently count the drop box cash in the presence of the other person and resolve any difference between the two counts. Then, one person shall record the count and the other person shall verify the recorded amount, and both persons shall initial and date the cash count report for each drop box.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-08-15. Tournaments.** Except as provided by this section, an organization shall conduct a twenty-one tournament according to this chapter. These rules must be disclosed to players:

1. ~~Except as provided by subsection 5, an An organization may shall~~ charge a player an entry fee, ~~shall set a minimum player buy-in amount for the preliminary and championship rounds or for the tournament, and shall set the time or number of shoes or hands to be played and provide the player a fixed number of no-value chips. Except for mini-tournaments, within a tournament, in which players pay a separate entry fee and the winning players advance to the championship round, the cumulative entry fee per player cannot exceed one hundred dollars. An organization may allow a player to reenter a tournament by paying another entry fee provided the player first lost all of the player's previous chips. An entry fee has no relationship to the number of chips issued to the player. The chips have no cash redemption value. An organization shall maintain a register of players and their entry fee.~~



2. An organization may assign a player one or two betting spaces. An organization may use a rotating button to signify the order of betting. If a button is used, it must move clockwise one position after each hand. The organization shall set the time or number of shoes or hands to be played.
3. A player may not move from table to table, temporarily stop playing, remove chips from on top of a table, or transfer chips to or from another player. An organization shall set a minimum bet limit and may set a maximum bet limit based on a number of chips. A bet must be made on each hand. ~~A player shall play with chips prescribed by subsection 3 of section 99-01.3-08-03 and issued for the tournament and keep the chips on top of a table.~~ A player may not cash out before the end of play unless the player withdraws.
4. ~~A player's score is the difference between the player's total buy-in amount and value of the chips redeemed.~~ An organization may advance players with the highest scores most number of chips from each preliminary round or mini-tournament to the next round or championship round. ~~An organization shall post all the players' scores at the end of a tournament.~~ A player with the highest score most number of chips, based on preliminary rounds, mini-tournaments, or a championship round, wins. ~~A~~ An organization may award a prize to the winning player of each mini-tournament. However, if two players remain in the tournament, they may agree to split the prize rather than finish the tournament. For a twenty-one tournament, a cash or merchandise prize may be awarded. For a poker tournament, only a cash or merchandise prize may be awarded and the total prizes may not exceed ninety percent of the entry fees.
5. ~~As an option, an organization may conduct a tournament in which the organization charges a player an entry fee and provides the player a fixed number of no-value chips. The entry fee cannot exceed one hundred dollars and has no relationship to the number of chips issued to the player. The chips have no cash redemption value. An organization shall set a minimum bet limit and may set a maximum bet limit based on a number of chips. A player with the most number of chips, based on preliminary rounds or a championship round, wins. A cash or merchandise prize may be awarded.~~

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.2

#### **99-01.3-08-16. Recordkeeping.**

1. For each day's activity, records must include:

- a. The starting and ending cash and chip banks and IOU records according to section 99-01.3-03-06;
  - b. Drop box cash and values of fill and credit slips of each table;
  - c. For a tournament, prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
  - d. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all twenty-one activity for a quarter must reconcile to the tax return; and
  - ~~d.~~ e. For a video surveillance system, dealer percent-of-hold information, videotape inventory log, ~~and videotape review record. These records that~~ must be retained for one year from the end of the quarter of activity; ~~however,~~ a and videotape review record that can be disposed of after thirty days unless it references criminal activity.
2. Chip inventory records according to subsection 5 of section 99-01.3-03-09.
  3. The cash profit (see subdivision h of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10.
  4. The count and reconciliation of a cash bank and casino and betting chips according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.  
**General Authority:** NDCC 53-06.1-01.1  
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-09

**99-01.3-09-01. Poker.** Poker is a card game dealt by one dealer. A player bets on the cards (hand) the player holds. All bets are collected together in the center of the table which is the pot. There may be an initial ante round and a blind bet by players. Then, after players receive their starting cards and after each round of new cards, there is a betting round. Each round, a player decides whether to continue contending for the pot by calling or raising the bet. After all the dealing of cards and betting has occurred and there are two or more players still in contention, there is a showdown to determine which player has the best hand. The object is for a player to win the pot by making a bet no other player is willing to match or for the player to have the most valuable hand after all the betting is over. ~~Based on the type of game, a winning player may hold the highest ranked hand, lowest ranked hand, or divided between the highest and lowest ranked hands.~~ Cards and hands are ranked according to the normal rules of poker.

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

### **99-01.3-09-02. Limitations and fees.**

1. An organization may only conduct poker on two occasions per year. An occasion may include more than one site. A nontournament occasion is a twenty-four-hour period of play. A tournament occasion is a consecutive three-calendar-day period of play.
2. For nontournament play, if an organization does not provide a dealer, ~~players must~~ shall use cash. ~~If an organization provides a dealer, players shall use chips.~~ An organization shall charge a player a fee not to exceed two dollars per one-half hour of playing time and collect the fee in advance. An employee shall record the fee when it is collected. The fee schedule must be ~~posted~~ disclosed or made available to players.
3. For a tournament, an organization shall provide a dealer, ~~charge a player an entry fee, and provide the player a fixed number of no-value chips. The entry fee cannot exceed one hundred dollars and has no relationship to the number of chips issued to the player. The chips have no cash redemption value. An organization shall set a minimum bet limit and may set a maximum bet limit based on a number of chips. A player with the most number of chips, based on preliminary rounds or a championship round, wins. A cash or merchandise prize may be awarded.~~ who cannot play in the game and:
  - a. Comply with section 99-01.3-08-15; or

b. Use value chips. An organization may charge a player an entry fee not to exceed one hundred dollars or a fee not to exceed two dollars per one-half hour of playing time, collected in advance. Only a cash prize may be awarded and the total prizes may not exceed ninety percent of the entry fees.

4. An organization that conducts poker through a "poker run" involving more than one site shall comply with guidelines prescribed by the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.2

**99-01.3-09-03. Posting Disclosure.** These rules must be posted disclosed or made available to players:

#### HOUSE RULES

Must use one deck of cards  
dealt out of the hand

Must use a cut card to conceal the bottom card of the deck

May allow a blind bet and set a minimum table limit

May allow an ante up to one dollar and set a minimum ante

May allow a maximum of three raises per round

Must limit each raise to an amount equal to  
or greater than the original bet; however, each  
raise must be equal to or greater than the original  
bet of that betting round

#### PLAYER RULES

Must be twenty-one years of age or older  
No side bets or credit

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.2

#### **99-01.3-09-04. Recordkeeping.**

1. For each poker occasion, records must include:
  - a. The starting and ending cash on hand according to section 99-01.3-03-06;
  - b. Except if an organization only charges a fixed entry fee for tournament play, for each one-half hour interval of each table the fees collected and number of players;

- c. For a tournament, prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
  - d. Name, initials, and time worked of the employee who collected the fee; and
  - d. e. A summary of gross proceeds, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all poker activity for a quarter must reconcile to the tax return.
2. The cash profit (see subdivision i of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10.

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-10

**99-01.3-10-01. Calcutta.** A "calcutta" is a sporting event in which players wager at an auction on the competitors. The conduct of a calcutta is the auction. An auction pool is comprised of the wagers paid by players who offered the highest bids on the competitors. The auction pool is distributed to the player who wagered on the winning competitor. The winning competitor may be one competitor, a team of competitors, or ranked competitors. The payout of the cash prize to a winning player is based on a predetermined percentage of the auction pool, which may not exceed ninety percent. Only cash prizes may be awarded.

1. A calcutta may only be conducted for a professional or amateur sporting event held in North Dakota, but not for an elementary, secondary, or postsecondary education sporting event. An organization may conduct more than one calcutta on the same sporting event. More than one organization may independently conduct a calcutta on the same event.
2. An organization shall acquire a calcutta board from a distributor and complete on it the sporting event, date of the sports event, and manner of distributing the auction pool as a prize. ~~An organization shall post the~~ The requirements of the players must be disclosed or made available to the players on the site.
3. Each competitor in a sporting event must be identified before the auction begins. A competitor may also be a player who may wager on oneself. A competitor may wager on another competitor.
4. Each competitor ~~listed on a calcutta board~~ must be eighteen years of age or older and to be eligible to be listed on a calcutta board. Each eligible competitor must be offered through an auction to prospective players. An organization may require that all eligible competitors be bid on and may set a minimum bid. A player who offers the highest bid for a competitor by a verbal, sealed, or open bid wagers on that competitor. A player may wager any amount and buy more than one competitor. A competitor may be auctioned off only to one player.
5. An open bid enables a potential player, during a certain time, to write the player's name and bid for a competitor on a register assigned that competitor. Each successive potential player interested in that competitor shall write the player's name and bid, of an amount higher than the previous bid, on the register. When the time period ends, the last player listed on the register wagers the amount bid on that competitor.
6. An organization shall conduct an auction at its site that may be where the sporting event is held. A player must be present to bid.

7. ~~The sequence of a verbal bid auction must be determined by a random drawing of the numbers assigned each line.~~
8. Before an auction, an employee shall:
  - a. Verbally announce the predetermined percentages of the auction pool that will be paid to a winning player and retained by an organization. The amount a player may win depends on the total amount of the auction pool and not on any odds; and
  - b. Complete for each line on a board a sequential number starting with the number one and a name of a competitor.
8. The sequence of a verbal bid auction must be determined by a random drawing of the numbers assigned each line.
9. If a competitor is not bid on by a player, an organization may sell the competitor by:
  - a. If there is more than one competitor not bid on, placing the competitors in one or more groups and auction a group as one competitor; or
  - b. Allowing a competitor to purchase oneself for a predetermined minimum wager.
10. After an auction, an employee shall complete this information for each line on a board and total the amounts wagered:
  - a. Full name and address of the player who bought the competitor; and
  - b. Amount wagered by the player.
11. If a competitor was bought by a player and does not compete in the event, an organization shall refund the wagered amount to the player.
12. After a sporting event, an employee shall complete on the board, for each winning player, the amount of the auction pool won. A winning player is the player who wagered on the competitor who won the event. An organization may award the prize to a winning player where the event is held. If an eligible competitor was not bought by a player and wins or places in the event, the organization shall retain the prize that would have been awarded on the competitor. If an ineligible competitor wins or places in the event, the organization shall award the prize that

would have been awarded on the competitor to the next highest ranked eligible competitor.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.3

**99-01.3-10-02. Recordkeeping.**

1. For each calcutta, records must include:
  - a. A calcutta board indicating the winning competitor and player. The board must be retained for one year from the end of the quarter of activity;
  - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
  - c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all calcuttas conducted for a quarter must reconcile to the tax return; and
  - d. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08.
2. Inventory records according to subsection 1 of section 99-01.3-03-09.
3. The cash profit (see subdivision j of subsection 6 of section 99-01.3-02-01) must be deposited according to section 99-01.3-03-10.
4. The count and reconciliation of calcutta boards according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1



## CHAPTER 99-01.3-11

**99-01.3-11-02. Paddlewheels - Excluding the use of a table.** This section applies to the method of paddlewheels described by subsection 1 of section 99-01.3-11-01.

1. All paddlewheel tickets of a card must be preprinted and contain one or more numbers or symbols corresponding to a paddlewheel. A number or symbol cannot be repeated on any of the tickets of a card number. A ticket must have a game serial number corresponding to the number printed on the ticket card's stub. A master flare for a series of paddlewheel ticket cards must state the type of paddlewheel tickets, cost per ticket, range of card numbers, have a state gaming stamp affixed to it bearing the card number of the lowest-numbered ticket card, and be posted.
2. The maximum price per ticket is two dollars. All the tickets of a series of paddlewheel ticket cards must be sold for the same price and the tickets cannot be discounted. A person may not be required to buy more than one ticket. All tickets must be sold on a site the day the game is conducted. All the tickets of a card must be sold before a spin. Otherwise, an employee shall refund the gross proceeds in exchange for the players' unplayed tickets.
3. A winner must be determined by spinning a paddlewheel. An organization may spin a paddlewheel multiple times to award multiple prizes for one paddlewheel ticket card. A paddlewheel must make at least four revolutions. Otherwise, the spin is void and the paddlewheel must be spun again.
4. No cash prize may be a variable multiple of the price of a ticket. No cash prize or the retail price of a merchandise prize for one winning ticket may exceed one hundred dollars. After a prize payoff, an employee shall record the date, card number, and cash prize amount or description of a merchandise prize and retain the winning ticket.
5. All paddlewheel ticket cards of a series related to the same master flare must be reported on the tax return in the quarter in which the series was first played. An organization may not carry over a partial series of paddlewheel ticket cards to another quarter. Any cards of a series which remain unsold during a quarter when other cards of that series were sold must be retained as part of the accounting records and cannot be used or disposed.
6. These rules and policy must be ~~posted~~ disclosed or made available to players:

- a. A player may not bet tickets that exceed a value of twenty dollars for one spin;
- b. A paddlewheel must make at least four revolutions;
- c. Whether a player is or is not required to be present when the paddlewheel is spun to win; and
- d. The time limit for the winning player to claim the prize; however, the limit cannot exceed one hour from the time of the drawing.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.4

**99-01.3-11-03. Paddlewheel, table, chips, and video surveillance system.**

1. A paddlewheel is a round mechanical vertical wheel, at least thirty inches [76.2 centimeters] in diameter, and may be divided into a maximum of five concentric circles. The outer circle must contain at least forty numbers or symbols. A paddlewheel may have house numbers or symbols for an optional odd or even bet. 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 and symbols may repeat on a circle. Each circle must be divided into equally spaced sections, be a different primary color, and correspond to the colored numbers or symbols of a table playing surface. The colored numbers or symbols of all concentric circles must be at least five-eighths of one inch [15.88 millimeters] in height.
2. A peg must protrude, on the circumference of a paddlewheel, between each section of the outside circle. A pointer must be positioned above a paddlewheel. It is used to stop a spin of a paddlewheel and determine the winning colored number or symbol.
3. A table must have:
  - a. A chip tray and a rail for holding a player's chips;
  - b. A playing surface which must be permanently imprinted with colored numbers or symbols of at least one and one-half inches [3.81 centimeters] in height relating to each circle of a paddlewheel. A table may have spaces for various wagers, including sets of numbers, colored numbers, symbols, and "ODD" and "EVEN" bets;

- c. Either a mirror to reflect or a color video camera and monitor to display the winning colored number or symbol on the paddlewheel; and
  - d. A "drop box" must have a money plunger which must remain in the slot unless the plunger is used.
4. An organization shall issue solid color-coded sets of chips for betting purposes. No betting chip can be ~~a twenty-one chip or be the primary color of mustard yellow.~~ The number of different sets and number of chips within each set is based on an organization's discretion. Each chip must be ~~round in shape,~~ be one and nine-sixteenths inches [39.62 millimeters] in diameter and be permanently impressed, engraved, or imprinted on one side with an organization's name and the other side may have a stated value of one dollar. The name may be represented by a unique identification that differentiates an organization's chips from other organizations' chips. Each chip is valued at one dollar.
5. An organization may shall issue payout casino chips in values of one dollar, five dollars, twenty-five dollars, and one hundred dollars for paying a winning bet or exchanging a betting chip. ~~Each chip must meet the specifications of subsection 4, be a prescribed primary color, and have white edge spots visible on the perimeter of both sides of a chip and on the chip's circumference, as follows:~~
- a. ~~One dollar chip - gray which is the color classified as N 5/ on the Munsell system of color coding. A one dollar chip must have three white solid edge spots and each edge spot must be fifteen thirty-seconds of one inch [12.18 millimeters] in width.~~
  - b. ~~Five dollar chip - orange which is the color classified as 2.5YR 6/14 on the Munsell system of color coding. A five dollar chip must have three white split edge spots and each edge spot must be fifteen thirty-seconds of one inch [12.18 millimeters] in width. Each of the two split portions of an edge spot must be one-eighth of one inch [3.05 millimeters] in width. The space between the two split portions must be three-sixteenths of one inch [4.56 millimeters] in width.~~
  - c. ~~Twenty-five dollar chip - green which is the color classified as 2.5G 5/12 on the Munsell system of color coding. A twenty-five dollar chip must have eight white solid edge spots and each edge spot must be five thirty-seconds of one inch [4.06 millimeters] in width.~~
  - d. ~~One hundred dollar chip - black which is the color classified as N 2/ on the Munsell system of color coding. A one hundred dollar chip must have four white triple split edge spots and each edge spot must be 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 one-sixteenth of one inch [1.52 millimeters] in width.~~

- ~~6. An employee shall safeguard the chips in a safe place or, if a table has been opened and no wheel operator is stationed at it, remove or lock up the chips. A casino chip must meet the specification of subsection 3 of section 99-01.3-08-03.~~
- ~~7. 5. An organization shall have a picture-in-picture video surveillance system on a table and paddlewheel. The system must meet the specifications and requirements prescribed by subsections 1, 2, 5, 6, 7, 8, 9, 10, and 11 of section 99-01.3-08-04.~~

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.4

**99-01.3-11-04. Opening and closing a table, number of employees, chip bank services, procedure for accepting currency and chips, and drop box.**

1. To open a paddlewheel table, an employee shall inspect each peg and the pointer of a paddlewheel for uneven wear, immediately replace any worn peg or pointer, and evaluate the balance of a paddlewheel. To close a table, an employee shall make it inoperable.
2. An organization may not conduct paddlewheels unless two employees are on duty at the site.
3. A fill; and credit, and credit/cash transfer slip must be prepared and used according to section 99-01.3-08-05. An organization shall perform chip bank services according to section 99-01.3-08-06. An organization may account for the games of paddlewheels and twenty-one separately and, if the activity is separately recorded, shall use casino chips prescribed by the attorney general.
4. A wheel operator, upon receiving currency from a player at a table, shall spread each bill of currency facedown and flat, in sequence of denomination, in the inner table area, perpendicular to a chip tray, and momentarily move the wheel operator's hands away from the currency so it is within a camera's view. A wheel operator, upon receiving a ~~payout or twenty-one~~ casino chip from a player at a table to be exchanged for a betting chip, shall place the chip in the inner table area at the dealer's left and sort, stack, and fan the chips. However, a wheel operator may use a rack to account for one or more sets of twenty chips of the same value. A wheel operator shall then take betting chips from the chip tray, equal in value to the currency or ~~payout or twenty-one chips~~ casino chip,

fan the betting chips, and momentarily move the wheel operator's hands away from the betting chips so they are within a camera's view. A wheel operator shall then restack the betting chips, push the betting chips to the player, and place the currency in a drop box or place the ~~payout or twenty-one chips~~ casino chip in the chip tray, or both.

5. After a day's activity, an employee shall transport a drop box from a table, store it, and count drop box cash according to section 99-01.3-08-14.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

#### **99-01.3-11-05. Conduct and play.**

1. An organization may limit the number of players and may require a minimum number of players to open a table.
2. A player shall buy a betting chip with currency or may exchange a ~~payout or twenty-one~~ casino chip for a betting chip. ~~A payout or twenty-one~~ Only a betting chip cannot can be used to place a bet.
3. The maximum betting limit of a player for each spin is ~~betting chips valued at~~ twenty dollars. Each chip is a separate chance to win. Unless an organization has a restrictive ~~posted~~ policy, a player may bet more than one chip on the same colored number or symbol for a spin. To bet, a player shall place a chip on the betting layout of a table. If a player's total bet exceeds a value of twenty dollars or exceeds an organization's maximum wager on a spin, the ~~entire~~ bet is void and, ~~unless an~~ the organization has shall adopt a ~~posted~~ policy, ~~only that~~ a player's chips in excess of the bet limit or all of the player's chips of the voided bet are forfeited. A player may not place a tip bet for a wheel operator.
4. After all the players have bought a betting chip and before a paddlewheel is spun, a wheel operator shall announce that the players' bets for the next spin must now be placed. A wheel operator may place a chip for a player if the wheel operator first states, in a voice loud enough to be heard by all the players at a table, that the player is being assisted. When a wheel operator has determined that no other person desires to bet, the wheel operator shall announce bets closed. Thereafter, a player may not bet or touch any placed betting chip or obstruct the view of the playing surface until after a wheel operator pays off all winning wagers. A wheel operator shall double spin a paddlewheel by pulling it in a downward or upward direction and releasing it. While the paddlewheel is in motion, a wheel operator shall again pull it in a consistent downward or upward direction. A paddlewheel must rotate at least four full

unrestricted revolutions. Otherwise, the spin is void and a paddlewheel must be spun again.

5. When a paddlewheel stops, a wheel operator shall announce the winning colored number or symbol in a tone of voice loud enough to be heard by all the players at a table. The announcement must be in sequence of the outermost circle first to the innermost circle last. A wheel operator shall first remove all losing betting chips from the table and place them in the chip tray. Then, a wheel operator shall pay off the winning betting chips in the sequence of the payoff bets that are most accessible to the players first and to the payoff bets that are least accessible to the players last.
6. To pay off a winning ~~betting chip (wager) bet~~, a wheel operator shall fan all of a player's betting chips toward the wheel operator or side. A wheel operator shall take a betting chip or chips of the same color as the winning chip or ~~take a payout casino chip or chips, or combination of betting and payout chips,~~ equal to the prize amount of the winning chip ~~or chips bet~~, from the chip tray, place the betting or payout casino chips; ~~or betting and payout chips,~~ in a stacked manner beside the wagered fanned betting chips, fan the payoff chips toward the wheel operator or side, and momentarily move the wheel operator's hands away from the chips so they are within a camera's view. However, if the prize payoff payout exceeds twenty betting or payout casino chips ~~or betting and payout chips of the same value~~, the wheel operator may use a rack to account for one or more sets of twenty payout chips and fan the remaining payout payoff chips.
7. A tip for a wheel operator must be made with a betting or payout casino chip. If a tip is made with a betting chip, a wheel operator shall immediately exchange the betting chip for a payout casino chip in the inner table area, momentarily move the wheel operator's hands away from the chip so it is within a camera's view, place the betting chip in the chip tray and payout casino chip in the tip receptacle. When the wheel operator's shift ends, the wheel operator shall take the tip receptacle and leave the table.
8. If a player desires to redeem a betting chips chip, an organization shall exchange the ~~player's chips betting chip~~ for ~~payout chips a casino chip~~ at the paddlewheel table. A player shall may redeem a payout casino chip with the cash bank cashier or ~~exchange a payout chip for a twenty-one chip at a use it in the game of twenty-one table.~~

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.4

**99-01.3-11-06. Posting Disclosure.**

1. These rules and notice must be posted disclosed or made available to players:
  - a. A player may not bet chips that exceed a value of twenty dollars for one spin.
  - b. A player must bet by placing a betting chip properly on the betting layout. ~~No payout or twenty-one chip can be used to place a bet.~~
  - c. A player may not touch a betting chip after the wheel operator announces "bets closed" ~~and may not~~ or obstruct the view of the playing surface until after a wheel operator pays off all winning wagers.
  - d. A paddlewheel must make at least four revolutions.
  - e. If a pointer stops on top of a peg, the number preceding the peg is the winning number.
  - f. 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 designated house number. This must be posted disclosed or made available to players if an odd or even bet is accepted.
  - g. A player may not take a betting chip away from the table and must be at the table to win. Otherwise, the player shall forfeit the betting chip.
  - h. If a player stops playing and has an unused betting chip, the player must exchange the betting chip for a ~~payout~~ casino chip through the wheel operator before the player leaves the table.
2. Prize ~~payoff~~ information must be posted disclosed, made available to players, or stated on a table playing surface. The information must reference each differently colored number or symbol, including an optional odd or even bet, and state each prize payoff. The payoff is the relationship of the prize to a winning betting chip. The payoff must be stated as "\_\_\_\_\_ to \_\_\_\_\_" or "\_\_\_\_\_ for \_\_\_\_\_". For example, for a red-colored number or symbol which pays forty dollars for a winning betting chip, the information must reference the red-colored number or symbol and state the payoff as "EXACT NUMBER RED 40 to 1".
3. A notice that if a person knowingly uses a fraudulent scheme or technique to cheat or skim involving paddlewheels, regardless of the

amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-07.4, 53-06.1-16

**99-01.3-11-07. Recordkeeping.** Records must include:

1. For each day's paddlewheel activity, ~~records must include described by subsection 1 of section 99-01.3-11-01:~~
  - a. ~~The~~ For each day's activity, the starting and ending cash banks and IOU records according to section 99-01.3-03-06;
  - b. For each ticket card of each series of paddlewheel ticket cards described by subsection 1 of section 99-01.3-11-01:
    - (1) Date conducted, card number, cash prize amount or cost and description of a merchandise prize; and
    - (2) The flare with all winning tickets and unsold ticket cards which must be retained for one year from the end of the quarter in which the activity was reported on a tax return; and
  - c. ~~For paddlewheel activity described by subsection 2 of section 99-01.3-11-01:~~
    - (1) ~~Drop box cash, and starting and ending value of betting and payout chips; and~~
    - (2) ~~For a video surveillance system, wheel operator percent-of-hold information, videotape inventory log, and videotape review record. These records must be retained for one year from the end of the quarter in which the activity was reported on a tax return; however, a videotape review record can be disposed of after thirty days unless it references criminal activity; and~~
  - d. ~~A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all paddlewheel activity for a quarter must reconcile to the tax return.~~
2. ~~Series of paddlewheel ticket cards inventory records according to subsection 1 of section 99-01.3-03-09.~~



- ~~3. The cash profit (see subdivisions k and l of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10. Series of paddlewheel ticket cards inventory records according to subsection 1 of section 99-01.3-03-09.~~
2. For paddlewheel activity described by subsection 2 of section 99-01.3-11-01:
  - a. The starting and ending cash and chip banks and IOU records according to section 99-01.3-03-06;
  - b. Drop box cash and values of fill and credit slips;
  - c. Wheel operator percent-of-hold information, videotape inventory log that must be retained for one year from the end of the quarter of activity, and videotape review record that can be disposed of after thirty days unless it references criminal activity;
  - d. Chip inventory records according to subsection 5 of section 99-01.3-03-09; and
  - e. The count and reconciliation of casino and betting chips according to subsection 6 of section 99-01.3-03-09.
3. For all paddlewheel activity:
  - a. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all paddlewheel activity for a quarter must reconcile to the tax return;
  - b. The cash profit (see subdivisions h and k of subsection 6 of section 99-01.3-02-01) must be deposited intact according to section 99-01.3-03-10; and
  - c. The count and reconciliation of a cash bank according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-12

### 99-01.3-12-02. Use and requirements of an organization.

1. An organization may operate a pull tab dispensing device when the organization's employee is on duty and may have a bar employee redeem a winning pull tab when the organization's employee is or is not on duty.
2. If a distributor's or manufacturer's security seal is broken on a deal's container before the deal is used, an organization shall return the deal to the distributor.
3. An organization shall ~~post a notice on a site containing~~ disclose or make these rules available to players:
  - a. Restricting access to or delaying using credits on a device is prohibited;
  - b. A winning pull tab must be redeemed within fifteen minutes;
  - c. A pull tab cannot be redeemed if it has been taken from the gaming area;
  - d. If a person knowingly solicits, provides, or receives any inside information, by any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both; and
  - e. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.
4. An organization shall maintain custody of all keys to a device. However, an organization may provide an authorized employee of a bar with a key to the cash compartment to withdraw currency or a drop box if:
  - a. A device's cash compartment is separate from its pull tab and accounting meter compartments. However, if access to a device's accounting meters is controlled by a security code, the cash and accounting meters may be in the same compartment;
  - b. The organization authorizes a specific employee of a bar to withdraw cash and complies with section 99-01.3-02-02 regarding a record check on the employee; and

- c. If a drop box is not used, an authorized employee of a bar shall count the cash, record the amount, sign and date the record, and secure the cash and record in a keyless locking bank bag. If a drop box is used, an organization may not provide the authorized employee of a bar the key to access the contents of the drop box.
5. An organization shall withdraw currency from a device within a seven-calendar-day interim period.
6. An organization shall use the current recordkeeping system prescribed by the attorney general.
7. An organization shall have a rental agreement conforming to section 99-01.3-02-06.
8. An organization shall maintain an access log prescribed by the attorney general. A person who accesses a device for any reason shall record the access and initial the log. When a person does a test vend or a test validation of currency, the person shall record the value of pull tabs and currency validated. An organization shall retain the log in a device during the quarter of activity.
9. An organization may provide a bar with a temporary loan to enable a bar employee to redeem a winning pull tab. A loan and any increase in the loan must be made by check payable to the bar and be interest free. An organization may not access, count, or take custody of the loaned money. The duration of the loan must be until an organization discontinues conducting pull tabs at a site through a device. When the bar repays the loan, the organization shall deposit the funds in its gaming account and the deposit slip or receipt must reference the site, source of funds, and amount. The amount reimbursed to a bar must equal the value of redeemed winning pull tabs which the bar provides an organization. An organization employee may not use a bar's cash on hand for redeeming a winning pull tab.
10. An organization may not provide an independent service technician a key to access a device regardless if the device is leased.
11. If a theft of currency occurs, an organization shall record the currency and pull tab or bingo card accounting meters or print a cash withdrawal report and audit the game. The organization shall provide a copy of all of this information to a local law enforcement agency and the attorney general.
12. When a game is closed:

- a. The game must be reported on a tax return for the site at which it was closed;
- b. An employee shall buy back all remaining redeemed winning pull tabs from a bar; and
- c. If the game has unsold pull tabs, these cannot be put back into play.

13. An organization or employee may not:

- a. Modify the assembly or operational functions of a device;
- b. ~~Remove or transfer a device from a site without notifying the attorney general within fourteen days of removing or transferring the device;~~
- e. Use or continue to conduct a deal of pull tabs after being notified by a distributor of a ban or recall of the deal;
- d. ~~c.~~ Designate a pull tab to entitle a player who buys it with a prize provided by a bar or distributor; or
- e. ~~d.~~ Intentionally test vend currency or pull tabs to synchronize nonresettable accounting meters.

14. A game must be conducted and played through a device as follows:

- a. Except for a game serial number and color of the pull tabs, the deals must be identical;
- b. An employee shall securely attach a master flare to the interior or exterior of a device, or on an adjacent wall, so the flare's information is visible to players. When a deal is added, the deal's flare may be retained in a device or at an organization's office;
- c. An employee shall place at least one complete and one-half deals deal in a device at the same time at the start of a game. ~~Any remaining pull tabs must be placed in the device first when additional pull tabs are added. If a device has column outlet slots, rather than a tray, pull tabs from both deals must be randomly placed in the stacking columns until full. Otherwise, pull tabs from one deal must be placed in two of the stacking columns and at least one-half of the pull tabs from a second deal must be placed in two other stacking columns until full. Next, any leftover pull tabs from the first deal must be placed in any remaining empty column. Then, the pull tabs in the columns must be evened out~~ The remaining pull

tabs of any partial deal must be added to the game before the game is closed;

- c. ~~An employee shall securely attach a master flare to the interior or exterior of a device, or on an adjacent wall, so the flare's information is visible to players. When a deal is added, the deal's flare may be retained in a device or at an organization's office;~~
- d. ~~If a device has column outlet slots, rather than a tray, an employee shall add remaining pull tabs of a deal previously partially placed in a device or pull tabs of a new deal by randomly mixing these pull tabs with pull tabs of previous deals that are in the device. Otherwise, an employee shall add a new or partial deal of pull tabs to a device by taking the unsold pull tabs of previous deals from all, except two, of the columns and placing those pull tabs on top of the unsold pull tabs of those two columns. Next, the employee shall place any overflow pull tabs and the new or partial deal's pull tabs in the empty columns until full and then place the deal's pull tabs in those two other columns. Then, the pull tabs in the columns must be evened out. If a partial deal is added to a game, the remaining pull tabs of that deal must be added next and before the game is closed~~ If a device does not have a tray, at the start of a game the pull tabs must be randomly placed in all the stacking columns. To add pull tabs to a game, an employee shall first add any remaining pull tabs of a deal previously partially placed in the device or pull tabs of a new deal by randomly mixing these pull tabs with the pull tabs in the device;
- e. If a device has a tray, at the start of a game the pull tabs from one deal must be placed in two stacking columns and at least one-half of the pull tabs from a second deal must be placed in two other stacking columns until full. Next, any leftover pull tabs from the first deal must be placed in any remaining empty column. Then, the pull tabs in the columns must be evened out. To add pull tabs to a game, an employee shall first add any remaining pull tabs of a deal previously partially placed in the device or pull tabs of a new deal by taking the unsold pull tabs from all, except two, of the columns and placing them on top of the unsold pull tabs of those two columns. Next, the employee shall place any overflow of unsold pull tabs and the partial or new deal's pull tabs in the empty columns until full and then place leftover pull tabs in those two other columns. Then, the pull tabs in the columns must be evened out;
- e: f. If a deal is to be added to a game and an organization does not have a deal to add, the organization shall temporarily suspend the game until it procures a deal. However, if the organization is unable

to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;

f. ~~g.~~ If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter or if a site has not previously had gaming, a game may be closed anytime if all top tier winning pull tabs have been redeemed;

g. ~~h.~~ Except as provided by subdivision h ~~i.~~, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and:

(1) Fifty deals have been added to a game;

(2) A game's actual gross proceeds are twenty-five thousand dollars; or

(3) A game has been in play for twenty-five consecutive calendar days;

h. ~~i.~~ An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed or low-level switches in all but two columns of a device have been triggered, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period. When a game is being closed, an employee shall post a sign stating that the game is being sold out;

i. ~~j.~~ If the percent-of-accuracy of all the games involving a device for a site for the previous quarter was less than ninety-eight and one-half percent, an employee who did not conduct the game shall do a weekly interim audit of the games at the site for up to twelve continuous weeks or until the organization determines, resolves, and documents the cause. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general. However, if games involving a device are conducted without a bar employee redeeming a winning pull tab, pull tab games not involving a device are also conducted, and the combined percent-of-accuracy of all pull tab games at the site for the previous quarter was ninety-eight and one-half percent or greater, no weekly interim audit is required. ~~This rule does not apply if the percent-of-accuracy was less than ninety-eight and~~

~~one-half percent as a direct result of a documented identified mechanical problem or theft~~ Percent-of-accuracy is computed as cash profit divided by adjusted gross proceeds; and

- j-k. An organization may transfer a device from a site to another site or rotate a device among sites. If an organization discontinues gaming at a site, it may close a game or transfer the game to a device at another site. If a game is in the process of being conducted through a device, an organization may not transfer the game to a jar bar.
15. Two or more organizations may use devices at the same site on different days of the week provided the organizations use different names of games in the devices and the bar uses separate cash banks.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-12-03. Requirements of a bar.**

1. A bar shall:
  - a. Place a device in a location where alcoholic beverages are dispensed and consumed and where a bar employee will regularly observe the device;
  - b. Prohibit a person from tampering or interfering with the operation or play of a device;
  - c. Have the electrical current to a device turned off unless alcoholic beverages may be dispensed, a bar employee or an employee is available to redeem a winning pull tab and a bar has cash on hand to redeem a winning pull tab;
  - d. Absorb a loss related to a counterfeited or lost pull tab, redeemed pull tab that was not bought at the site, and loss or theft of the temporary loan of funds;
  - e. Repay an organization's temporary loan of funds within fourteen days of when the organization discontinues conducting pull tabs through a device at a site; and
  - f. If a malfunction of a device is known by the bar or its employee, turn the device off and promptly notify the organization. Otherwise, the bar or its employee is responsible for any cash shortage; and

- g. Use an organization's loan of money only to redeem a winning pull tab. If the bar violates this rule, the attorney general may suspend any or all games at the site for up to six months.
2. Except to withdraw currency or a drop box according to subsection 4 of section 99-01.3-12-02, a bar employee may not access, attempt to access, or permit a person, other than an employee of an organization, to access the interior of a device for any reason.
  3. If a bar employee believes that a deal is defective or there is a problem with a redeemed pull tab, the bar employee shall contact an organization and may turn a device off.
  4. A bar may accept or not accept a gaming-related check from a player. A player's check must be payable to a bar. A bar is responsible for a player's check returned by a financial institution as uncollectible. A bar 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.
  5. Only a bar employee who is authorized by a bar may redeem a winning pull tab.
  6. A bar employee may not summarize or audit a game of pull tabs for an organization.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-12-04. Requirements of a bar and an organization.**

1. A bar employee or an employee shall deface a winning number or symbol of a pull tab when it is redeemed. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced.
2. A bar employee or an employee may not:
  - a. Assist a player in opening a pull tab except to assist a disabled player;
  - b. Knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, or has a game serial number different from the serial numbers of the deals in the game;



- c. Knowingly pay a prize to a player who is redeeming a pull tab when the player with the pull tab has left the gaming area of a site;
  - d. Publicly display a redeemed pull tab;
  - e. Knowingly pay a prize for a pull tab after fifteen minutes has elapsed since it was bought. If a player attempts to redeem a pull tab after the allowed time limit, a bar employee or an employee shall, if possible, retain and void the pull tab; or
  - f. Pay, from gaming funds or any other source, a prize to a player unless the player redeems an actual winning pull tab that has a game serial number from a game conducted at the site; or
  - g. Reimburse, from any source of funds, an amount to a player for play of a game that is defective or has a material incorrect posting of information described by subsection 7, unless the attorney general approves.
3. A prize must be cash. There may be no last sale prize.
  4. If a device malfunctions, is inoperable, and a player has a credit, a bar employee or an employee shall pay the player for the player's unplayed credits and record the refund on a credit redemption register. A bar shall provide this form to an organization to claim a reimbursement. If a player's currency jams in a currency validator and a device does not show a credit, a bar employee may not reimburse a player, and shall record the jam on a credit redemption register and notify an organization. If an organization determines that a device is cash long, the organization shall reimburse a player by cash or check.
  5. A bar employee and an ~~organization~~ employee shall document the number and value of redeemed winning pull tabs, by value, that are exchanged for cash or check. These pull tabs must be segregated grouped, banded, and retained separate from other pull tabs that the organization may have directly redeemed, by interim period.
  6. An organization shall provide a bar employee and a bar shall maintain a current copy of subsection 9 of section 99-01.3-02-03 and sections 99-01.3-02-05, 99-01.3-02-09, 99-01.3-03-08, 99-01.3-12-03, and 99-01.3-12-04 regarding the bar employee's and bar's duties and restrictions.
  7. A bar employee or an employee may post the information referenced by subdivision a or b, or both, provided that an organization does not have a partial deal that is to be added to a device. An organization shall post a statement that the information is correct to the best of the

organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain unredeemed. Posted information may be the information described in subdivision a or b, or both:

- a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.
- b. The number or unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern. The information must be continually updated.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

**99-01.3-12-05. Recordkeeping. Records must include:**

- ~~1. For each game, records must include:~~
  - a. All redeemed and unsold pull tabs for a game must be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return;
- ~~b. 2.~~ 2. The deal's game information sheet and flare with the state gaming stamp affixed must be retained for three years from the end of the quarter in which the game was reported on a tax return;
- ~~c. 3.~~ 3. A record of game serial numbers for each game;
- ~~d. 4.~~ 4. Record of win according to section 99-01.3-03-08;
- ~~e. 5.~~ 5. Credit redemption register;

- f. 6. If an employee redeems winning pull tabs at a site, a daily employee report documenting the starting and ending cash on hand and IOU records according to section 99-01.3-03-06 and prizes redeemed;
- g. 7. Interim period site summary, including meter readings, gaming stamp number and game serial number of a deal added to a device, currency withdrawn, redeemed prizes by denomination obtained from a bar, total prizes, credit redemption register refunds, cash profit or loss, and bank deposit;
- h. 8. Summary, including cumulative prizes, cash profit, bank deposits, and redeemed top tier pull tabs by game serial number;
- i. 9. Inventory records according to subsection 1 of section 99-01.3-03-09; and
- j. 10. Access log.
- 2. 11. A summary of ideal gross proceeds, value of unsold pull tabs, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all games for a quarter must reconcile to the tax return.
- 3. 12. The cash profit (see subdivision d of subsection 6 of section 99-01.3-02-01) for an interim period must be deposited intact according to section 99-01.3-03-10.
- 13. The count and reconciliation of deals and a cash bank according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.  
**General Authority:** NDCC 53-06.1-01.1  
**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-13

### 99-01.3-13-02. Use and requirements of an organization.

1. An organization may operate a bingo card dispensing device the same as a pull tab device according to section 99-01.3-12-02. An organization shall comply with subsections 1 through 13 of section 99-01.3-12-02 in respect to bingo cards, rather than pull tabs.
2. Bingo must be conducted and played as follows:
  - a. An employee shall ensure that all the bingo balls are present and draw or predraw numbers for the pattern related to a prize flare. An employee shall record a control number (sequential number used to track sets of called bingo numbers), device serial number, winning pattern, and prize on a prize flare that may or may not have a state gaming stamp affixed. The called numbers must be recorded on a two-part record of called bingo numbers form. A set of called bingo numbers may be used to complete more than one record of called bingo numbers form for use at more than one site if the forms are used at the same time for the same winning pattern. The original of the form must be forwarded to a bookkeeper;
  - b. A different prize flare must be used for each deal of bingo cards;
  - c. If a prize flare is not scheduled to be posted immediately:
    - (1) The copy of the record of called bingo numbers form must be placed in an envelope attached to the prize flare. The envelope must reference the site, control number, and dates and times when the prize flare is scheduled to be posted. An organization shall safeguard the envelope and prize flare until they are used; and
    - (2) When a prize flare is scheduled to be posted, an employee shall forward the copy of the record of called bingo numbers form to a bar employee or an employee who will redeem a winning card. A new prize flare may be posted at any time;
  - d. If a prize flare is scheduled to be posted immediately:
    - (1) A bingo caller shall announce to players that the bingo numbers to be called relate to the prize flare involving a device; and

- (2) A bingo caller shall forward the copy of the record of called bingo numbers form to a bar employee or an employee who will redeem a winning bingo card;
- e. A prize flare must be ~~securely~~ posted on or adjacent to a device. The numbers on a record of called bingo numbers form must be posted on a device's flashboard. Two employees or one employee and any neutral person shall verify that the bingo numbers are correctly displayed. This verification must be acknowledged by both persons who shall, in the presence of each other, initial and date a prize flare. One of these persons shall write the time and date when the prize flare is posted;
- f. If there is a difference in the numbers posted in relation to the record of called bingo numbers form, the numbers on the form are official;
- g. An organization shall ~~post~~ disclose or make available one of these statements to players:
- (1) "If a bingo card contains multiple winning patterns, only the pattern related to the largest prize amount will be paid";
- (2) "A bingo card may contain multiple winning patterns if the patterns do not overlap"; or
- (3) "A bingo card may contain multiple winning patterns and the patterns may overlap";
- h. ~~Except for~~ Only a distributor, ~~a person~~ may ~~not~~ adjust a device's internal clock;
- i. Bingo gross receipts include sales tax;
- j. ~~An employee may not modify a prize flare, use a prize flare that is altered, or modify a game serial number written on a gaming stamp;~~
- k. An organization shall close the bingo activity when the deal is sold out or ~~when~~ a new prize flare is posted;
- ~~l.~~ k. An organization shall provide a bar employee and an employee with a bingo card master checkbook;
- ~~m.~~ l. When a prize flare is discontinued, an employee shall write the time and date on the prize flare and initial it; and
- ~~n.~~ m. If an organization replaces a prize flare during a day, an employee shall, fifteen minutes before the scheduled posting, turn a device

off and verbally announce that players must redeem winning cards by the posting time.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

#### **99-01.3-13-04. Requirements of a bar and an organization.**

1. A bar shall comply with section 99-01.3-12-03 in respect to bingo cards; ~~rather than pull tabs.~~ A bar employee or an employee shall comply with subsections 1 through 6 of section 99-01.3-12-04 in respect to bingo cards; ~~rather than pull tabs.~~
2. A player shall use an ink dauber or a broad tip colored transparent highlighter to mark numbers. ~~If any other writing tool is used, a bar employee and an employee may not redeem the bingo card but shall return the card to the player so the player may, if possible and within the time limitation, properly mark the numbers. Otherwise, the bingo card is void.~~
3. A bar employee or an employee may not knowingly pay a prize to a player who is redeeming a bingo card that does not contain a validated control code, month and day, and time of the transaction. A bar employee or an employee shall compare the ~~daubed or~~ marked numbers of a redeemed bingo card to the record of called bingo numbers form and compare the validated time of a redeemed card to the time limitation. For a cash prize of two hundred dollars or more, a bar employee and an employee shall also verify a redeemed card by using a master checkbook. For a redeemed card, a bar employee or an employee shall write the amount of the cash prize; ~~excluding cents,~~ in the prize line on the game information side of the card, and initial beside the line.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-06

#### **99-01.3-13-05. Recordkeeping.**

1. For each interim period, records must include:
  - a. A prize flare for each deal of a game; ~~All and~~ test vended bingo cards ~~and, redeemed, and unsold bingo~~ cards must be retained for one year from the end of the quarter in which the activity was reported on a tax return;
  - b. Record of win according to section 99-01.3-03-08;

- c. Record of called bingo numbers;
  - d. Credit redemption register;
  - e. If an employee redeems winning bingo cards at a site, a daily employee report documenting the daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06 and prizes redeemed;
  - f. Interim period site summary, including meter readings, gaming stamp number and game serial number of a deal added to a device, currency withdrawn, redeemed prizes by denomination obtained from a bar, total prizes, credit redemption register refunds, cash profit or loss, and bank deposit;
  - g. Summary, including cumulative prizes, cash profit, and bank deposits;
  - h. Inventory records according to subsection 1 of section 99-01.3-03-09; and
  - i. Access log.
2. A summary of ideal gross proceeds, value of unsold bingo cards, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all interim periods for a quarter must reconcile to the tax return.
  3. The cash profit (see subdivision d of subsection 6 of section 99-01.3-02-01) for an interim period must be deposited intact according to section 99-01.3-03-10.
  4. The count and reconciliation of deals and a cash bank according to subsection 6 of section 99-01.3-03-09.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-14

### 99-01.3-14-01. Restrictions and requirements.

1. An organization may not accept, and a recipient or potential recipient of net proceeds may not give or offer to give, a payment, gift, service, loan, personal or real property, or other thing of material value, for disbursing or receiving net proceeds. However, a recipient or potential recipient of net proceeds that is an organization or group of people may initiate and transact a formal agreement with a donor organization to voluntarily provide a gaming or nongaming related service to the donor organization in exchange for receiving net proceeds; provided, the agreement is first approved by the attorney general or complies with guidelines prescribed by the attorney general. If the attorney general approves the service, the donor organization shall document the service by recording the location, names of volunteers, description of service, number of hours volunteered, and value of the service based on a reasonable hourly rate. The donor organization shall offset the value of these services against the amount of net proceeds disbursed to the recipient during a quarter by reporting the value of these services as an adjustment on a tax return.
2. A disbursement of net proceeds must be specific as to recipient and use. After an organization disburses net proceeds, it may not interfere with a recipient's control of the funds or attempt to own or influence the use or sale of personal or real property bought by or for a recipient of the funds.
3. Use of net proceeds for economic development or tourism programs may not directly benefit a member, employee, or board of directors' member of a donor or donee organization nor may this person have a financial interest in a funded economic development or tourism program.
4. No private athletic, social, hobby, trade, business, professional, or similar clubs or associations may receive net proceeds, unless the use of the funds complies with subsection 2 of North Dakota Century Code section 53-06.1-11.1 or section 99-01.3-14-02. An expense related directly or indirectly with gaming is not an eligible use.
5. Restrictions on fundraising activities are:
  - a. An organization or recipient may not use net proceeds for a fundraising activity that relates directly to the conduct of gaming, including purchase of equipment or consumable goods for a cafe for a site or for direct or indirect expenses and capital costs for a retail business involving material unrelated business income;



- b. ~~A charitable, educational, religious, or public safety organization may use net proceeds for expenses for any fundraising activity and only the net income of that activity may be applied to an imbalance of its gaming or trust account. If a public-spirited an organization uses net proceeds for a fundraising activity related to its primary purpose that qualifies as an eligible use, only the net income of that activity may be applied to an imbalance of its gaming or trust account. If a public-spirited organization uses net proceeds for a fundraising activity that is not directly related to its primary purpose, it shall reimburse the trust account for the cost of the fundraising activity; and~~
- c. ~~A civic and service, fraternal, or veterans' organization may use net proceeds for expenses for a fundraising activity that it conducts only if the activity is for a specific recipient or purpose that qualifies as an eligible use. If the an organization conducts a qualifying fundraising event and deposits the event's gross receipts in or pays the expenses from other than its trust account, it may not disburse net proceeds to the recipient ~~or use~~ unless it transfers the net income from the event to its trust account and makes a proper adjustment on a tax return; and~~
- d. If a civic and service, fraternal, or veterans' organization uses net proceeds to conduct a fundraising activity and the expenses are more than the gross income, it shall reimburse the trust account for the difference with nongaming funds and make a proper adjustment on the tax return.
6. The attorney general may require a recipient of net proceeds to document the use of the funds and reimburse a donor organization if the funds were used for an ineligible use.
7. Unless an organization has first received approval from the attorney general, it may not sell a gift certificate or other thing of value to a recipient of its net proceeds.
8. If a check for a disbursement of net proceeds is not cashed by a recipient within six months of the date of the check, an organization shall contact the recipient to cancel or cash the check. If a check is voided, an organization shall make a proper adjustment on a tax return. If a recipient of net proceeds cashes a check related to a disbursement of net proceeds but has not applied the amount toward the intended eligible use within six months of the date of the check, the organization may request the recipient to return the net proceeds.
9. An organization may only disburse net proceeds to a recipient provided the recipient first requests a donation in writing and provides a

description of the intended use and amount requested and the request is signed and dated. Also, if the recipient is a charitable organization, professional fundraiser, or professional solicitor, the recipient shall provide the organization with evidence that it has or is exempt from a charitable solicitations license ~~or is exempt from a charitable solicitations license~~ required by North Dakota Century Code chapter 50-22. This rule does not apply to an unsolicited donation of net proceeds or a disbursement of net proceeds by an organization to a program or service that qualifies as an eligible use and which is supported directly by the organization.

10. If an organization conducts or enables a nonprofit corporation, community or school club, or other similar entity to conduct a fundraising event at the organization's facility, the organization may not exchange the gross or net receipts of the fundraising event for ~~a disbursement of net proceeds.~~
11. An organization may not disburse net proceeds to a recipient on the condition that the recipient hold a meal or banquet at the donor's facility.
12. No disbursement of net proceeds can be used partly for services or fees that do not qualify as an eligible use. No disbursement of net proceeds to a recipient can be designed to circumvent the allowable expense limits.
13. If an organization is involved in any of the following types of transactions, it shall deposit the net proceeds or income directly into its trust account or, if it is exempt from having a trust account, deposit the net proceeds or income in its gaming account, and make a proper adjustment on a tax return:
  - a. The organization receives net proceeds from another organization and the net proceeds have been designated for a specific eligible use which the recipient has paid for or will pay for with net proceeds, or the net proceeds have not been designated for a specific eligible use;
  - b. The organization loans net proceeds and receives interest or repayment of principal, or both; or
  - c. A recipient returns net proceeds to or reimburses the organization.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-11

**99-01.3-14-02. Eligible uses.**

1. A use of net proceeds for erecting, acquiring, improving, maintaining, or repairing real or personal qualifying property owned by an organization is an eligible use provided the organization agrees that, upon abandoning the exclusive use of the property for an eligible use, it will transfer the property to a governmental unit or to an organization that will use it for an eligible use. However, if an organization sells the property, the portion of net receipts from the sale related to the original net proceeds must be deposited in the trust account and disbursed to an eligible use.
2. In applying subdivision a of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds must be disbursed to or by a recognized nonprofit city or county job development authority or certified or noncertified local development corporation.
3. In applying subdivision b of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds must be used to attract in-state and out-of-state visitors by publicizing attractions, promoting, planning, conducting, and sponsoring market research, trade shows, meetings, conventions, seminars, sporting events, and festivals, and by developing and promoting the state's attractions, recreational opportunities, shopping malls, and other tourism-related activities. Uses may not directly benefit a for-profit business.
4. In applying subdivision c of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:
  - a. A scholarship for a student. A scholarship may be based on criteria, including community service, patriotism, leadership, education, talent, athletic ability, course of study, or special disability. No scholarship award may be decided by a donor organization, unless the organization administers an education program for special students or students inflicted with disease. Net proceeds may be disbursed to a scholarship board or to an educational institution. A majority of the members of a scholarship board may not be members of a donor organization. A disbursement must be payable to an educational institution and a recipient, scholarship board and a recipient, or to an educational institution or scholarship board. A student receiving a scholarship may apply it at a nonprofit public, or for-profit or nonprofit private, educational institution registered with or accredited by any state. A scholarship may be for housing, books, tuition, and meals that relate to a student's educational need. A scholarship may be awarded through a pageant, contest, or tournament; however, associated administrative and operating expenses do not qualify. No scholarship may be based on criteria that includes a person's physical appearance;

- b. Supplemental assistance to a primary, secondary, or postsecondary nonprofit educational institution, including affiliated alumni associations, booster clubs, parent-teacher councils, and college sororities and fraternities. Net proceeds may be used for youth activities, educational equipment, musical instruments, playground equipment, extracurricular activities, sporting events, field trips, cultural exchanges, maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, and supplies;
- c. Assistance to a library for maintenance of buildings, remodeling, fixed assets, administrative and operating expenses, supplies, program services, special events, promotions, educational material, books, computer systems, information services, exhibits, story hours, film showings, and discussion groups. A disbursement to a museum may be for maintaining buildings, remodeling, fixed assets, administrative and operating expenses, and assembly of exhibits for preservation, collection, education, and interpretation;
- d. Assistance to a nonprofit performing arts and humanities organization for studio and 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. Preservation of cultural heritage, including restoring, reconstructing, improving, or preserving public buildings in North Dakota which are listed in the state historic sites registry or the national registry of historic places. Net proceeds may be used for programs of nonprofit organizations that provide historical information or tell a story about a local region, North Dakota, or the nation and which primarily educate and inspire the public, elderly, disabled, schoolchildren, teachers, and foreign visitors. Qualifying programs include the lifestyles and human experiences of homesteaders, immigrants, Indian culture, frontier army, and fur trade. Net proceeds may be used for interpretive programming, including 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 expenses of parades, displays, equipment, educational materials, and awards. School reunion expenses do not qualify;
- f. Youth community and athletic activities open to all youth, less than eighteen years of age. An organization shall disburse, to the extent possible, equal amounts to activities for each gender. Net proceeds may be used for uniforms, equipment, tournament fees, private and public ground transportation, coaches' salaries, judges, field trips,

speaker fees, father-son and mother-daughter banquets provided that the meals for these banquets are provided free ~~or at actual cost to the participants~~, meals, and lodging. Business-sponsored appreciation luncheons and banquets, advertising, and the purchase of a transportation vehicle do not qualify;

- g. Adult amateur athletic activities within North Dakota. Net proceeds may be used for sponsorship and league fees for entire teams, uniforms, umpire fees, construction, use and maintenance of a sports complex, and team equipment. Uniforms and team equipment must be owned by the team or league association. Tournament fees, individual player fees, food and drink, lodging, trophies, prizes, yearbook, advertising, and private or public transportation expenses do not qualify, except transportation expenses for a disabled player. A race car, horse racing, and similar activity do not qualify;
  - h. Maintenance of religious buildings, remodeling, fixed assets, administrative and operating expenses, gospel outreach programs, youth church activities, uniforms for a choir, furnishings, and supplies for church groups and services; and
  - i. Scientific research for a cure to relieve human beings of disease and suffering.
5. In applying subdivision d of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:
- a. Food, temporary housing, clothing, utilities, medical services, and fuel for private and public transportation for an individual or family suffering from poverty or homelessness, or financial distress due to a medical problem;
  - b. Purchase and maintenance of a ground transportation vehicle for the elderly;
  - c. Services for abused persons, including to:
    - (1) Provide emotional support, guidance, and counseling to victims of crimes of rape and sexual assault and encourage prosecution of perpetrators;
    - (2) Establish educational programs about rape, sexual assault and incest, the dramatic effects it has on victims and their families, and the cost to society;
    - (3) Establish and direct services for abused spouses and their children in the community, including advocacy, emergency

shelter and food, information services, referrals, and peer support; and

(4) Develop and coordinate programs to encourage and assist development of a strong volunteer advocate network-;

- d. Support for youth centers and halfway houses;
  - e. Recognize an individual or group of people who volunteer their time to community services, nursing homes, or hospitals if a gift, prize, or other gratuity does not exceed one hundred dollars per person per calendar year;
  - f. Net proceeds may be used for public or private nonprofit nursing homes, day care centers, and medical facilities for maintaining buildings, remodeling, fixed assets, administrative and operating services, supplies, reading programs, and craft activities for patients;
  - g. Complying with the Americans with Disabilities Act of 1990 by remodeling a publicly owned facility; and
  - h. To remodel or improve a fraternal or veterans' organization's owned facility or a nonprofit community facility to make it accessible or usable to youth, senior citizens, people with disabilities, and nonmembers of the organization, for community programs, services, or functions. The community must use a building for free or a reasonable fee. To make a building accessible, net proceeds may be used to widen doorways and hallways, remodel bathroom fixtures and facilities, install chair lifts, wheelchair ramps, elevators, handrails, and automatic door openers. To make a building usable, net proceeds may be used to repair a building to meet a building code or make it structurally fit for use, to enlarge a facility, replace a furnace, water heater, and air-conditioner, and to make it safe. The cost must be prorated to the benefit the community receives in relation to the total usage of the facility as determined by the attorney general.
6. In applying subdivision e of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include burial expenses and flowers provided an organization does not discriminate between members and nonmembers.
7. In applying subdivision f of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include promotion and celebration of civil rights, nondiscrimination, patriotism, and freedom. State and national convention expenses; recognition nights that may include a banquet, program, and dance for past commanders or past members;

ceremonial and ritual activities; and purchase of a transportation vehicle do not qualify.

8. In applying subdivision g of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include maintaining parks and perpetual trust funds for public cemeteries.
9. In applying subdivision j of subsection 2 of North Dakota Century Code section 53-06.1-11.1, net proceeds may be used for subsistence for a family member traveling with an ill family member to an out-of-town medical facility.
- 9- 10. In applying subdivision l of subsection 2 of North Dakota Century Code section 53-06.1-11.1, eligible uses include:
  - a. Adult and city bands, choirs, including drum and bugle corps, color and honor guards, parade floats, director fees, rent of storage, postage, insurance, laundry, utilities, uniforms, gun safe, firearm, sheet music, audio system, instruments, transportation vehicle, and private and public ground transportation for performances at community concerts, homecomings, open houses, parades, festivals, funerals, nursing homes, hospitals, and special events. For only a color or honor guard, net proceeds may be used to pay a member a maximum per diem of fifteen dollars for each day of actual service. An audio system and instruments must be owned by a band, choir, or organization. A vehicle must be owned by an organization;
  - b. Educational agricultural trade shows and conventions held in North Dakota. Meals and entertainment do not qualify;
  - c. Nonprofit organizations that protect animals. Uses include:
    - (1) Hatcheries and wildlife preserves, wetlands, and sanctuaries;
    - (2) Teaching and promoting ecology, game and wildlife management, and outdoor interests involving animals, fish, and birds; and
    - (3) Spay and neuter programs, pet placement, lost and found pet services, educational programs, investigations of animal abuse, and information services; and
  - d. Preserving and cleaning up the environment, including air quality, water quality, and waste programs, and conservation of natural resources; and

e. Outreach public medical care.

~~40~~: 11. In applying subdivision m of subsection 2 of North Dakota Century Code section 53-06.1-11.1, a special trust fund:

- a. Must be managed and controlled by trustees, who may be board members, appointed by an organization. However, if an organization dissolves, it must establish a nonprofit corporation limited to the primary purpose stated in its declaration of trust. A trust may be revocable or irrevocable; and
- b. Must be comprised only of net proceeds which can be disbursed to the trust periodically or in a lump sum. Net proceeds must be invested only in marketable securities. A trust's principal, interest, dividends, and gains on sales of investments must be applied toward the trust's primary purpose. No trust's principal can be disbursed until a donor organization has permanently discontinued conducting games or dissolved.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01, 53-06.1-01.1



## CHAPTER 99-01.3-15

**99-01.3-15-01. License.** Except as provided by subsection 1 of section 99-01.3-02-04, a person may not sell, lease, solicit business, or provide gaming equipment to a licensed organization, distributor, or organization that has a ~~local~~ permit without a license. A license is not transferable. The annual licensing period is April first through March thirty-first. An application must include information prescribed by the attorney general. A license must be displayed at the business office.

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-14

### **99-01.3-15-02. Restrictions and requirements.**

1. A licensed organization, organization that has a ~~local~~ permit, or licensed manufacturer may not be a distributor. A person who is an officer, manager, gaming manager, or member of a governing board of a licensed organization or organization that has a ~~local~~ permit may not be an officer, director, shareholder, proprietor, consultant, or employee of a distributor, nor have a financial interest in that distributor. A person having a financial interest in a distributor may not be a lessor of a site to an organization that is an active customer of that distributor. A change in ownership of a distributor must be immediately reported to the attorney general.
2. A distributor shall have an office in North Dakota ~~at which~~ where records must be kept.
3. An officer, director, shareholder, agent, or employee of a distributor may not:
  - a. Directly or indirectly play a game of pull tabs, club special, tip board, ~~coin~~ prize board, seal board, sports-pool board, or punchboard at any site, or provide bookkeeping services, including summarizing or auditing games, to an organization; or
  - b. Interfere with or attempt to influence a lessor's relationship with an organization involving a lease agreement, interfere with or attempt to influence an organization's management, employment practices, policy, gaming operation, or disbursement of net proceeds, attempt to influence a bar to enter into or cancel a lease agreement with an organization, or procure a site for an organization. A distributor may notify an organization of an available site.

4. A distributor may not have an expressed or implied agreement with another distributor to restrict the sales of either of them to a specific geographic area or organization.
5. A distributor may not sell or provide a drop box unless it is a double-locking or triple-locking removable metal container and has:
  - a. One lock that secures a drop box to the underside of a table, and one or two separate locks that secure the contents placed into the drop box. The key to each of the locks must be different; and
  - b. A slot opening through which currency and forms can be inserted into a drop box. The slot of a drop box may not exceed three and one-half inches [88.90 millimeters] in length and one-half inch [38.10 millimeters] in width. Inside a drop box there must be a spring-loaded mechanism that automatically closes and locks the slot opening when the drop box is removed from a table.
6. A distributor may not sell or provide twenty-one and paddlewheel (betting and ~~payout~~ casino) chips to an organization if those chips are identical in physical characteristic to chips previously sold or provided by that distributor to a different organization.
7. A distributor may not, directly or indirectly, give a gift, trip, prize, or other gratuity valued singly or in the aggregate in excess of one hundred dollars per employee per calendar year related to a licensed organization or organization that has a ~~local~~ permit. A distributor may not, directly or indirectly, loan money (excluding credit) to a licensed organization or organization that has a ~~local~~ permit, or to an employee of such an organization.
8. An employee of a distributor who is an owner or salesperson shall, within thirty days of starting business or employment, request training from the attorney general. The training must include the gaming law, rules, and recordkeeping. An employee shall read and acknowledge in writing, within thirty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions of the gaming law and rules which relate to the person's job duties. The attorney general shall designate the provisions to be read. The acknowledgment must be dated, reference the provisions, and be part of the person's personnel file.
9. A distributor may not share an office or warehouse facility with an organization.
10. A distributor shall file a copy of each sales invoice, ~~gaming stamp log,~~ related to a licensed organization and record of voided gaming stamps

with the attorney general by the fifth business day following the month of the transaction.

11. A distributor may not buy or be provided gaming equipment from an affiliated company unless the company is a wholly owned subsidiary of the distributor. An affiliated company must have originally bought the equipment directly from a licensed manufacturer.
12. A distributor may not buy or be provided gaming equipment from an out-of-state distributor unless the out-of-state distributor has the manufacturer ship the equipment directly to the licensed distributor and the manufacturer is licensed.
13. A distributor may not knowingly possess, display, sell, or provide an organization a deal of pull tabs or bingo cards, club special, tip board, ~~coin~~ prize board, or punchboard that:
  - a. Does not conform to the quality standards of section 99-01.3-16-04, 99-01.3-16-05, or 99-01.3-16-06;
  - b. Has a manufacturer's or distributor's seal broken on the manufacturer's container or has been prohibited by the attorney general from sale or play within North Dakota; or
  - c. Contains pull tabs or punches that have winner protection features although they are not winning pull tabs or punches.
14. A distributor may not temporarily store any game that has a state gaming stamp affixed to its flare which has been sold. A sale occurs when a distributor issues a sales invoice. If a distributor sells or provides gaming equipment to another distributor, the distributor shall ship the equipment directly to the other distributor's address ~~in North Dakota~~.
15. A distributor shall direct a manufacturer to ship gaming equipment directly to the distributor and the distributor shall have it unloaded at its warehouse. However, if a distributor buys equipment from a manufacturer for sale to another distributor or buys a flashboard, blower, jar bar, paddlewheel, or twenty-one, poker, or paddlewheel table for sale to an organization, the distributor may direct the manufacturer to ship the equipment directly to the other distributor or organization, including the organization's site.
16. A distributor may not separate a paper card when there are two or more faces on a sheet.
17. A distributor may not:

- a. Sell or provide a dispensing device or bingo card marking device to an organization unless a model of the device has first been approved by the attorney general;
  - b. Modify an approved dispensing device model or electronic currency validator unless authorized by the attorney general; or
  - c. Rent a dispensing device to an organization unless the rent is for a fixed dollar rate per month or other duration. For a bingo card ~~making~~ marking device, a distributor may rent a bingo card marking device to an organization for a fixed dollar rate per month or other duration, or for a percentage or fixed dollar amount of rental income derived from a player who uses the device. Rent may not be based on gross proceeds of bingo. If a distributor rents a bingo card marking device to an organization, the distributor may have a manufacturer, on behalf of the distributor, issue an invoice to an organization; however, the organization shall remit all rent payments directly to the distributor.
18. A distributor may arrange for an organization to acquire a dispensing device through a financing lease purchase agreement with a finance or lease company. Although an organization is deemed to own a device, a finance or lease company may have a security interest or ownership right in the device until the organization satisfies the lease.
19. If a distributor is an agent for another distributor in marketing a dispensing device, the agent is not required to complete a sales invoice. A distributor is an agent if it receives a commission and does not finance or take temporary possession or title to the device.
20. A distributor that sells or provides a new or used dispensing device to an organization or distributor, other than as an agent, or merely transacts a transfer of a device, for or without a fee, between two organizations, shall do the following unless that distributor contracts with another distributor to comply with this rule on its behalf:
- a. Maintain an adequate inventory of electronic and mechanical parts in North Dakota, provide maintenance service, and provide technical assistance and training in the service and repair of a device;
  - b. Make available, upon request, electrical and mechanical parts to all other licensed distributors at the usual price for such parts; and
  - c. Notify the attorney general of any recurring electronic or mechanical malfunction of a device model.

21. A distributor that resells, transacts a transfer, rents, or provides a used dispensing device to an organization shall change or arrange to have changed all the keyed locks on the device.
22. A distributor that sells or provides a dispensing device to an organization shall record this information on a sales invoice:
  - a. Name, address, and license number of an organization and name and location, if known, of the site where the device will be placed; and
  - b. Name of device and its serial number.
23. A distributor shall initially set up a dispensing device at a site and conduct and document one training session on the operation and service of the device for an employee of an organization that buys a device for the first time.
24. A service technician may not access a dispensing device unless accompanied by an organization employee.
25. A distributor may not possess, in inventory, a processing chip encoded with proprietary software that was duplicated by the distributor for a dispensing device usable in North Dakota.
26. A distributor may not sell or provide new video surveillance equipment or install video surveillance equipment for an organization unless the distributor is a regular vendor of this equipment and is approved by the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-14

#### **99-01.3-15-03. Inventory records and reconciliation.**

1. A distributor shall maintain a quantity-based perpetual inventory system for deals of pull tabs and bingo cards used in a dispensing device, club specials, tip boards, coin prize boards, and punchboards that are bought or received from any source. A system must account for the sale or disposition of each item. The system must separately account for the quantity of items acquired, sold, and remaining in inventory by:
  - a. Name of manufacturer or other source, and purchase invoice number and date;

- b. Name of game and manufacturer's game form number, excluding deals of jar tickets; and
  - c. Distributor's sales invoice number and date.
2. A distributor shall maintain a quantity-based perpetual inventory system for paper bingo cards that are bought or received from any source. A system must account for the sale and disposition of each card. The system must separately account for the quantity of cards acquired, sold, and remaining in inventory by:
- a. Name of manufacturer or source, and supplier's sales invoice number and date;
  - b. Type of card or booklet;
  - c. Primary color of card;
  - d. Size of the series;
  - e. Quantity received; and
  - f. Distributor's sales invoice number and date.
3. A distributor shall semiannually reconcile its inventory of deals of pull tabs and bingo cards used in a dispensing device, paper bingo cards, club specials, ~~eein~~ prize boards, tip boards, and punchboards that are recorded as being in inventory to these items that are actually in inventory. A person shall count these items in inventory, compare this count to the inventory records, and resolve any difference. The count must be done by a person who is not primarily responsible for safeguarding the physical inventory. A reconciliation must be documented, including the name and title of the person who does the reconciliation, date performed, result, corrective action taken, and initials of that person.

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-15-06. Distribution of gaming equipment.**

1. A manufacturer's game serial number must be on a paddlewheel ticket described by subsection 1 of section 99-01.3-11-01, seal board, tip board, sports-pool board, and calcutta board. No game serial number may be special ordered. A game serial number must be preprinted on a paddlewheel ticket card. If a game serial number is not preprinted on

a seal board, sports-pool board, or calcutta board, a distributor shall assign and electronically or mechanically imprint it on the board. No serial number may be repeated within three years.

2. For a deal of pull tabs (two-ply card with break-open tabs), deal of bingo cards used in a dispensing device, and a specialty jar ticket game, a distributor may open a manufacturer's cellophane shrink wrap to access a flare. A distributor shall affix a state gaming stamp on the front of the original flare of a deal of pull tabs and bingo cards, club special, tip board, series of paddlewheel ticket cards, and on a punchboard, sports-pool board, seal board, coin prize board, and calcutta board that is sold or provided to a customer. If a case of bingo cards that is used in a dispensing device consists of two or more containers, each container is a separate deal, regardless of whether the game serial number is the same. A gaming stamp must be affixed in North Dakota. A distributor shall legibly write a manufacturer's game serial number in ink on the stamp. If the written number is incorrect, the number cannot be changed or erased and the stamp must be voided. For a series of paddlewheel ticket cards, the game serial number written must be the lowest numbered paddlewheel ticket card. Then, a distributor shall replace, if applicable, a flare inside the cellophane shrink wrap and seal the opening. This rule does not apply to gaming equipment provided directly to an organization that has a permit, Indian tribe, United States military, out-of-state purchaser, or another licensed distributor.
3. If a manufacturer's security seal on a container is inadvertently broken but the integrity of a deal remains intact, a distributor may reseal the deal with a distributor permanent adhesive security seal. The seal must be applied to all accessible sides of a container and ensure that a deal's pull tabs or bingo cards are not accessible from outside the container. A distributor shall indicate on a sales invoice that the deal was resealed by the distributor and the reason.
4. A distributor shall provide a flare with a deal of pull tabs or jar tickets and series of paddlewheel ticket cards. The master flare for a game involving deals of jar tickets that contain winning tickets of the same prize value printed in differently colored numbers or symbols must have the flare's numbers and symbols printed in matching colors. A flare, including a master flare, must indicate the name of the game, manufacturer's form number (excluding a flare for a deal of jar tickets), cost per play, and value and number of winning prizes. The front of a flare for a deal of jar tickets must indicate the number of jar tickets in the deal. The number of prizes may be designated by a number or by a quantity of symbols that represent the number of winning prizes and winning number or symbol. A symbol must be pictured on a flare, not described. A last sale prize must be printed on a flare or be indicated by a permanently affixed sticker. The flare or sticker must contain the

last sale feature, prize value, and distributor's name or license number. Except to add a last sale feature to a manufacturer's flare for a deal of pull tabs (two-ply or three-ply card), a distributor may not alter a flare. A distributor may make a flare for a deal of jar tickets. This information must be mechanically or electronically printed on a flare.

5. A distributor shall provide an organization with an adequate supply of bingo prize flares for use with a bingo card dispensing device.
6. A distributor may not sell or provide a ten or twelve line or twenty-five or one hundred square sports-pool board to a customer unless a special opaque tape covers the numbers on the board. If a tape is disturbed, any recovering of the numbers must be detectable. A tape must prevent the concealed numbers from being viewed from outside when using a high-intensity lamp of up to five hundred watts.
7. For a deal of jar tickets, club special, tip board, and coin prize board, a distributor shall provide a game information sheet containing cost per play, ideal gross proceeds, ideal prizes, including any last sale prize, if known, and ideal adjusted gross proceeds or, in place of a separate sheet, the information may be printed on the front or back of the deal's flare.
8. A distributor shall print these phrases on a sports-pool board:
  - a. Professional sports pool;
  - b. Cost per play \$\_\_\_\_\_;
  - c. Date of sports event \_\_\_\_\_;
  - d. Ideal prizes \$\_\_\_\_\_; and
  - e. Method of prize payout \_\_\_\_\_.
9. A distributor shall indicate this information on the flare of a series of paddlewheel ticket cards:
  - a. Game serial numbers of the lowest and highest numbered paddlewheel ticket cards;
  - b. Quantity of cards; and
  - c. Type of paddlewheel ticket (for example, 40 x 3 x 120), if applicable.



10. A distributor shall print the phrases "merchandise prize \_\_\_\_\_" and "retail value \$ \_\_\_\_\_" on a flare and for each seal for a game that has a merchandise prize.
11. A distributor shall sell a calcutta board that is cardboard or similar material on which is printed a matrix of horizontal lines and vertical columns sufficient to accommodate the information required by subsections 8 7, 10, and 12 of section 99-01.3-10-01. A distributor shall print "calcutta" at the top of a board and print the phrases "sporting event \_\_\_\_\_", "method of prize payout \_\_\_\_\_", and "date of sports event \_\_\_\_\_" on the board.
12. A distributor shall print the phrases "cost per play \$ \_\_\_\_\_" and "retail value \$ \_\_\_\_\_" on a seal board.
13. A distributor shall print "cost per play \$ \_\_\_\_\_" or similar phrase on a coin prize board.
14. If a distributor is notified by an organization that the game serial number of a deal of pull tabs or bingo cards, club special, tip board, seal board, punchboard, series of paddlewheel ticket cards, calcutta board, coin prize board, or sports-pool board is different from the number written on a state gaming stamp, the distributor shall ~~take immediate action to correct the gaming stamp and sign a correction form and~~ follow procedures prescribed by the attorney general.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1.-01.1, 53-06.1-14

**99-01.3-15-10. Recordkeeping.** A distributor shall maintain complete, accurate, and legible accounting records in North Dakota. The records must be retained for three years and include, by month:

1. Purchase invoices for gaming equipment.
2. Sales invoices for gaming equipment, supplies, and services sold or provided. A sales invoice must be prepared on a form prescribed by the attorney general and include:
  - a. License number of the distributor;
  - b. Business name and address of the buyer and business name and address where the gaming equipment or supplies were shipped to or where the service was performed;
  - c. License or ~~local~~ permit number of the buyer, if applicable;

- d. Invoice number and date;
  - e. Date shipped;
  - f. Indication for a credit memo;
  - g. Quantity, price, and description of each item of gaming equipment, supplies, and services. This includes the name of game and indication of the item as a deal of pull tabs or bingo cards, club special, coin prize board, tip board, seal board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards. For a deal of pull tabs (excluding jar tickets) and bingo cards, it must include a manufacturer's form number. For a series of paddlewheel ticket cards, it must include the number of paddlewheel ticket cards and number of tickets on each card. For a coin prize board, it must include separate costs, including sales tax, for a merchandise prize (if any), coins, and board and pull tabs. For paper bingo cards, it must include the primary color of single cards or primary color of the top card of collated booklets, type (number of faces on a sheet) of collated booklets or single cards, number of cards in a collated booklet, and serial number and size of series. For a bingo card marking device, it must include the quantity;
  - h. Gaming stamp number;
  - i. Ideal gross proceeds, ideal adjusted gross proceeds, price of a merchandise prize, and value of a last sale prize; and
  - j. An indication that a deal was resealed and the reason, if applicable.
3. A sales invoice must be:
- a. Prenumbered consecutively with a preprinted number of at least four characters;
  - b. Prepared in three parts and issued as follows:
    - (1) One part to the customer;
    - (2) One part retained in an invoice file by customer name; and
    - (3) One part to the attorney general. ~~Every invoice, including voids, must be numerically accounted for~~ according to subsection 10 of section 99-01.3-15-02; and

- c. A credit memo for a returned item must be prepared and issued like a sales invoice. A credit memo must represent only a returned item.
4. A sales journal must include the invoice date, number, total amount, and name of customer.
5. A cash receipts journal must include cash sales, cash received from all sources, name of customer, date a payment is received, and amount.
6. A cash payments journal must include checks issued, cash payments, date of check or payment, check number, name of payee, and type of expense.
7. ~~Gaming stamp log on which gaming stamp and game serial numbers are recorded and a record~~ Record of voided gaming stamps on a form prescribed by the attorney general.
8. Inventory records and reconciliation of inventories.
9. A repair report for each service call on a dispensing device.
10. Documentation of a training session conducted according to subsection 23 of section 99-01.3-15-02.
11. A manufacturer's invoice that references a rental fee charged an organization for a bingo card marking device.
12. A quantity-based perpetual inventory record of bingo card marking devices provided to or withdrawn from a site must include the organization name and model of device.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

## CHAPTER 99-01.3-16

**99-01.3-16-01. License.** A manufacturer of deals of pull tabs or bingo cards, paper bingo cards, bingo card marking device, or a pull tab dispensing device, or any other person may not directly or indirectly sell, lease, solicit business, or provide these items to a distributor without a license. If two or more manufacturers are affiliated, each manufacturer shall apply for a license. A license is not transferable. The annual licensing period is April first through March thirty-first. An application must include information prescribed by the attorney general. The license fee is four thousand dollars. If a person manufactures pull tabs and paper bingo cards, or, pull tab dispensing devices and either pull tabs or paper bingo cards, or both, only one license fee is required.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1, 53-06.1-14

### **99-01.3-16-03. Restrictions and requirements.**

1. A manufacturer that sells, or provides, paper bingo cards to a distributor shall print its name or distinctive logo and the assigned serial number and series number (card number) on each card. A manufacturer shall have available for sale or provide to a distributor a master checkbook covering all card serial numbers. A manufacturer may not ship paper bingo cards directly to a licensed organization or organization that has a local permit.
2. A manufacturer may only sell or provide gaming equipment to a licensed distributor. A manufacturer shall maintain accounting records of all sales of gaming equipment and retain them for three years. The records may be in electronic form.
3. A manufacturer may not modify the assembly or operational functions of an approved pull tab or bingo card dispensing device model unless requested by the attorney general or a written request is approved by the attorney general. The attorney general may apply section 99-01.3-16-10 for approving a modification to a device model.
4. A manufacturer may service a bingo card marking device used by an organization.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-16-04. Quality standards for pull tabs.** A manufacturer shall manufacture pull tabs according to these standards:

1. Construction.

- a. A deal must be designed, constructed, glued, and assembled to prevent the determination of a winning pull tab or numbers or symbols without first removing the tabs or other covering.
  - b. All the pull tabs of a deal must have the same game serial number which cannot be repeated on the same form number for three years.
  - c. When a tab or other covering is removed, the numbers or symbols must be fully visible in the window and must be placed so that no part of a symbol or number remains covered. The numbers or symbols can be displaced to the left or right in a window for increased security.
  - d. The window slits on a pull tab must be perforated on three sides. A pull tab 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 a pull tab.
2. Opacity. Concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of a pull tab using a high-intensity lamp of five hundred watts.
3. Color. It must not be possible to detect or pick out winning from losing pull tabs through a variation in printing graphics or colors, especially those involving different printing plates.
4. Printed information. The minimum information printed on a pull tab must be as follows, except that subdivisions b, c, and d are not required for a folded or banded jar ticket or to a two-ply or three-ply card with only one perforated break-open tab which measures one and one-quarter inches [31.7 millimeters] by two and one-quarter inches [57.1 millimeters] or less in size, and subdivisions b, c, and e are not required for a pull tab used with a coin prize board:
- a. Name of manufacturer or its logo;
  - b. Name of game;
  - c. Cost per pull tab;
  - d. Manufacturer's form number;
  - e. Number of winning pull tabs and winning numbers or symbols, and prize amounts, or a flare must be included with the game providing that information; and

- f. Unique minimum five-character game serial number, printed on the game information side of the pull tab.
5. Winner protection. A unique symbol or printed security device, such as a specific number keyed to a particular winning pull tab, or the name of the symbol or some of the symbol colors changed for a winning pull tab, or other similar protection must be placed in the winning windows of winning pull tabs. Also, a winning pull tab that has a prize greater than twenty dollars must have a secondary form of winner verification.
6. Randomization. The winning pull tabs must be intermixed among all other pull tabs in a deal to eliminate any pattern between deals, or portions of deals, from which the location or approximate location of any winning pull tab may be determined. A deal must be assembled so that no placement of winning or losing pull tabs exists that allows prize manipulation or pick out. Banded jar tickets packaged in a bag must be randomized.
7. Guillotine cutting. It must not be possible to isolate winning or potential winning pull tabs of a deal by variations in size or the appearance of a cut edge of the pull tabs.
8. Packaging.
  - a. A deal's container must be sealed with a seal that warns the purchaser (end user) that the deal may have been tampered with if the container was received with the seal broken. A seal must ensure that a deal's pull tabs are not accessible from outside the container when sealed. A manufacturer shall seal or tape every entry point into the container. The seal or tape must be tamper-resistant and be designed so that should a container be opened or tampered with, it would be easily noticed. 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 cannot be a manufacturer's cellophane shrink wrap.
  - b. A manufacturer shall print, in bold letters, "Pull tabs must be removed from this packaging container and thoroughly mixed before sale to the public" or similar language on the outside of a container.
  - c. A deal's game serial number must be legibly placed on or be able to be viewed from the outside of the deal's container.
  - d. For a deal shipped to North Dakota, a flare for a deal of pull tabs (two-ply or three-ply card) or a specialty jar ticket deal must be located on the outside of the deal's sealed container so that the seal will not be broken to access the flare.

9. Number of top tier winners. A Except for a deal for a prize board, a deal must have at least two top tier winning pull tabs.
10. A manufacturer may not exactly duplicate (print) a winning number, symbol, or set of symbols of any nonpromotional jar ticket or pull tab on any promotional jar ticket or pull tab.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-16-08. Manufacturing specifications - Dispensing device.** A pull tab and a bingo card dispensing device must meet these specifications:

1. If a device is designed to accommodate two or more different games of pull tabs, each compartment must independently meet the specifications 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 power cord must be ten feet [3.05 meters] in length and have a three-prong ground at the male end. A surge protector or in-line power filter must be installed in-line on the main powerline to a device. A device must safely and operatively withstand a static test of twenty thousand volts of electricity and maintain proper voltage during a low electrical current (brownout);
3. A bingo card device must have an on and off keyed switch located in front of the device to control the electrical current or electronic currency validator;
4. A pull tab device must have at least four columns for stacking pull tabs and have capacity for two thousand four hundred pull tabs. A bingo card device must have at least two columns for stacking bingo cards and have capacity for two thousand two hundred cards. A stacking column for bingo daubers is optional;
5. A stacking column must be adjustable for varying lengths of pull tabs. However, as an option, a device may use replaceable stacking columns that accommodate varying lengths of pull tabs. The device must accommodate a minimum pull tab size of one and seven-eighths inches [47.6 millimeters] in width by two and five-eighths inches [64.77 millimeters] in length, a maximum pull tab size of one and seven-eighths inches [47.6 millimeters] in width by four and one-fourth inches [107.95 millimeters] in length, or both sizes;

6. A device must be adjustable for varying thicknesses of pull tabs or bingo cards;
7. Glass must be placed in front of the columns and be sufficiently clear to enable an employee to see whether a device is low on pull tabs or bingo cards;
8. A device must have a dispensing outlet or tray to catch a dispensed pull tab or bingo card;
9. A device must have one currency validator. A coin validator is not allowed;
10. A pull tab device must accommodate pricing of twenty-five cents, fifty cents, one dollar, and two dollars per pull tab and dispense the correct number of pull tabs based on the amount of credit played. The standard price per pull tab must apply to all columns;
11. A bingo card device must accommodate pricing of twenty-five cents, fifty cents, one dollar, two dollars, and five dollars. The price at which each column is set may differ for dispensing differently priced cards and daubers. A device must dispense the correct number of bingo cards and daubers based on the amount of credit played;
12. An exterior door must have at least one keyed lock. The key must be different from all other keys used on other devices manufactured by the manufacturer;
13. A pull tab device may have an optional "all" player button that activates the device to dispense pull tabs at one time, equal to the value of the unplayed credits and randomly from the columns selected by a random number generator or player button sequencing concept;
14. A bingo card device may have an optional "all" player button that activates the device to dispense up to twenty-five bingo cards at one time from the column selected by a player. However, an "all" player button cannot apply to a bingo dauber column;
15. A device must have an interior mode switch, interior dipswitch, or an exterior mode switch activated by a key which enables a person to:
  - a. Set the price per pull tab, bingo card, or dauber; and
  - b. Unless a device prints reports prescribed by subsection 18, access the accounting information required by subsection 16 and, if the device has nonresettable electronic accounting meters, subsection 17;



16. Unless a device prints reports prescribed by subsection 18, 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 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; and
  - b. Total number of pull tabs or bingo cards dispensed;
17. Unless a pull tab or bingo card device prints reports prescribed by subsection 18, 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 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; and
  - b. Cumulative number of pull tabs or bingo cards dispensed;
18. Unless a device has resettable and nonresettable accounting meters prescribed by subsections 16 and 17, the device must print a cash pickup and a lifetime activity report.
  - a. A cash pickup and a lifetime activity report must:
    - (1) Be printed and accessible only from the interior of a device;
    - (2) State the time and date of the present report and of the preceding report. The time must be expressed in numeric hours and minutes. The hour must be expressed as a.m. or p.m.;
    - (3) State the unique device number; and
    - (4) State a sequential report number, which must be at least three digits in length, starting with number one.
  - b. A cash pickup report, based on resettable electronic accounting meters, must include this information for activity since the preceding report:

- (1) For a pull tab device, number and value of pull tabs dispensed from all columns;
  - (2) For a bingo card device, number and value of bingo cards and daubers dispensed from each column and from all columns; and
  - (3) Value of currency validated.
- c. A lifetime activity report, based on nonresettable electronic accounting meters, must include this information for activity since a device was manufactured:
- (1) For a pull tab device, cumulative number and value of pull tabs dispensed from all columns;
  - (2) For a bingo card device, number and value of bingo cards and daubers dispensed from each column and from all columns; and
  - (3) Cumulative value of currency validated;
19. To ensure a commingling of pull tabs, a random number generator or player button sequencing concept must be used to select a particular column from which a pull tab will be dispensed. A selection process is random if it does not produce a significant statistic of recurring patterns. A player button sequencing concept must field each button at least one hundred times a second;
  20. Instructions for player operation must be permanently affixed or placed under glass or other transparent material on the front of a device;
  21. A pull tab device must have one or more player buttons located on the front of it which activate the dispensing of a pull tab. However, excluding an "all" player button, the number of player buttons may not exceed the number of columns. Regardless of which player button is pressed, the selection of a particular column from which a pull tab is dispensed must be done by a random number generator or player button sequencing concept;
  22. A bingo card device must have a separate button located on the front of it for each column of bingo cards and for the bingo dauber column which activates the dispensing of a card or dauber from that column;
  23. A device must have an LED or LCD display screen of at least four digits in length. However, if a device uses two independent nonresettable electronic accounting meters, the device must have an LED or LCD

display screen of at least six digits in length. The digits must be one-half of one inch [12.70 millimeters] in height. The value of currency validated must be displayed on the LED or LCD screen as a monetary credit which is drawn down as a device vends a pull tab, bingo card, or dauber. Unless a device prints reports prescribed by subsection 18, the LED or LCD display screen must also display the accounting information required by subsection 16 and pricing information required by subdivision a of subsection 15;

24. A device must record every vend of a pull tab, bingo card, and dauber and every currency validation, including a test vend of a pull tab, bingo card, or dauber and a test validation of currency, on the accounting meters required by subsections 16 and 17 or subsection 18;
25. If a device malfunction occurs or electrical power is interrupted, the value of credits previously displayed on an LED or LCD display screen must be correctly redisplayed immediately after the malfunction is cleared or electrical power is restored. However, this rule does not apply if a device is totally inoperable;
26. In a pull tab device a column of pull tabs must automatically discontinue operation, triggered by ~~an electronic microswitch or~~ a micro, optical, or software controlled switch, when the column has fewer than fifty pull tabs remaining. However, this rule does not apply when an organization is closing a game at which time a ~~microswitch or~~ micro, optical, or software controlled switch may be circumvented;
27. A device must automatically stop operating when there is only one column of pull tabs remaining in order when the other columns of pull tabs are out of order due to a low level of pull tabs remaining in one or more stacking columns or due to jams. However, if this occurs and there are unplayed credits on the device, the device may dispense pull tabs equal to the value of the unplayed credits from the remaining column before the device automatically stops operating. A device must automatically stop operating when all the columns of bingo cards are out of order;
28. An identification plate must be affixed at the top of an exterior side panel and contain the device's:
  - a. Manufacturer;
  - b. Serial and model numbers; and
  - c. Date of manufacture which may be part of the model number;
29. No device may have an auxiliary remote control unit for posting credits;

30. A device must automatically stop operating when a nonresettable meter is disconnected;
31. A device must have a maintenance and operations manual;
32. A bingo card device must validate a dispensed bingo card by printing this information in a prescribed area on the card. The validation must be clearly printed in permanent purple or black ink and be electronically printed at least three-sixteenths of one inch [4.76 millimeters] in height:
  - a. Unique machine number or validation control code of at least four characters in length;
  - b. Month and day. The month may be expressed alphabetically and may be abbreviated to three characters or it may be expressed in numeric digits. The day must be expressed in numeric digits; and
  - c. Time expressed in numeric hours and minutes. The hour must be designated as a.m. or p.m. Military time is not allowed;
33. A bingo card device's internal clock must be programmed to automatically adjust the time to change to and from daylight ~~savings~~ saving time. A device must maintain the proper time for six months after electrical power to the device is turned off; and
34. A bingo card device must have an electronic LED flashboard for posting bingo numbers which, when lit, must be readable from a distance of ten feet [3.05 meters].

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-16-09. Standards for a currency validator - Dispensing device.**

A currency validator must:

1. Validate only United States currency and only values of ~~one, two, five, ten, and twenty dollar bills~~ up to fifty dollars;
2. Have an antipullback mechanism and other anticheat devices that prevent cheating of the bill acceptor by mechanical means;
3. Reject invalid and all known manipulations of United States currency;
4. Have a currency stacker box or drop box; and

5. If a malfunction occurs, automatically discontinue accepting or validating currency.

**History:** Effective May 1, 1998; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-16-09.1. Manufacturing specifications - Bingo card marking devices.** A site system, and bingo card marking device which displays a facsimile of a bingo card and allows a player to electronically mark the card, must meet these specifications:

1. A site system is computer hardware and software used at a site by an organization which generates and downloads electronic bingo card images to devices, accounts for gross proceeds, and provides accounting information on all activity for ~~one year~~ three years from the end of the quarter in which the activity occurred. It must:
  - a. Record a nonresettable electronic consecutive six-digit receipt number for each transaction;
  - b. Issue a receipt for each transaction containing:
    - (1) Name of a site or organization;
    - (2) Date and time of the transaction;
    - (3) Number of electronic bingo card images downloaded;
    - (4) Selling price of a card or package, rental fee, gross proceeds, and receipt number; and
    - (5) Serial number of device issued to a player;
  - c. Print a summary report for each session containing the date and time of the report, name of site, date of the session, sequential session number, number of transactions, number of voided transactions, number of electronic bingo card images downloaded, number of devices used, total gross proceeds, and, for each transaction, list:
    - (1) Sequential transaction number starting with one;
    - (2) Device serial number;
    - (3) Type of transaction (sale or void);

- (4) Time of transaction;
  - (5) Number of electronic bingo card images downloaded;
  - (6) Selling price of a card or package; and
  - (7) Receipt number;
- d. Must be remote-accessible by the manufacturer of the device and attorney general for monitoring the system operation and accounting information in real time; and
  - e. Must be capable of printing an electronic card image of any downloaded card;
2. A device must be a portable hand-held unit and cannot be wired directly to a site system;
  3. A device must be programmed for use at only the site where the site system is located;
  4. A device must have a unique serial number permanently encoded in the software;
  5. No device can allow more than seventy-two cards to be played per game;
  6. A device must require a player to manually enter each bingo number by using an input function key;
  7. A device can display a player's best card or a winning card and alert only that player through an audio or video method, or both, that the player has a winning card;
  8. A device must automatically erase all stored cards at the end of the last game of a session or when the device is turned off; and
  9. A device must be downloaded with new cards at the beginning of each session time of the sales transaction.

**History:** Effective July 1, 2000; amended effective July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

**99-01.3-16-10. Testing and, approval, and recall.**

1. A manufacturer of a pull tab or bingo card dispensing device or bingo card marking device may not sell or provide a device to a distributor unless a model of the device has been approved by the attorney general.
2. A manufacturer of a dispensing device shall provide a device model, a copy of its construction blueprint, wiring schematics, circuit analysis, technical and operation manuals, random number generator or player button sequencing concept source and object code computer programs, proprietary operating software source and object code computer programs, and other information requested by the attorney general. A manufacturer of a bingo card marking device shall provide a device model site system, technical and operations manual, proprietary operating software source and object code computer programs, and other information requested by the attorney general. A manufacturer of a currency validator shall provide a copy of the source and object code computer programs and other information requested by the attorney general. A manufacturer may provide a copy of letters of approval and test reports of the dispensing device, bingo card marking device, or currency validator from other states, federal jurisdictions, or independent testing laboratories.
3. The attorney general may require a manufacturer of a dispensing device, bingo card marking device, or currency validator to transport a working model, and the information required by subsection 2 to the attorney general or designee for analysis, testing, and evaluation. A manufacturer shall pay all the costs and provide special equipment for the testing. The attorney general may require a manufacturer to pay the estimated costs, in advance. After the analysis, testing, and evaluation is done, the designee shall provide the results to the attorney general. An overpayment of costs must be refunded to a manufacturer or the manufacturer shall pay any underpayment of costs. The attorney general shall provide the manufacturer with the results. Before approving a device's model, the attorney general may require a trial period.
4. If a manufacturer of a dispensing device knows or determines that a model of device is defective or can be manipulated, the manufacturer shall immediately notify the attorney general and cease selling the device. The attorney general may require the manufacturer to recall or modify the device. Upon notification, a manufacturer shall initiate compliance with a recall or modification at the manufacturer's expense.

**History:** Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002.

**General Authority:** NDCC 53-06.1-01.1

**Law Implemented:** NDCC 53-06.1-01.1

