

NORTH DAKOTA ADMINISTRATIVE CODE

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**Prepared by the Legislative Council staff
for the
Administrative Rules Committee**

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TITLE 7
AGRICULTURE COMMISSIONER

APRIL 2013

CHAPTER 7-03.2-14

7-03.2-14-02. Vehicle requirements. All vehicles used to transport dairy products must comply with the following:

1. A temperature of ~~forty-one~~ forty-five degrees Fahrenheit [~~5 7.22~~ degrees Celsius] or lower must be maintained in the storage area of the vehicle.
2. All milk and milk products, except frozen desserts, must be maintained at ~~forty-one~~ forty-five degrees Fahrenheit [~~5 7.22~~ degrees Celsius] or lower. Ultrapasteurized and aseptically processed dairy products are exempt from this requirement.
3. Frozen desserts must be properly cooled to maintain solid form and texture.
4. The interior of the storage area must be cleaned daily and be free from insects and rodents.
5. An approved thermometer must be mounted in the storage area of all vehicles.

History: Effective October 1, 2009; amended effective April 1, 2013.

General Authority: NDCC 4-30-55.1

Law Implemented: NDCC 4-30-39

CHAPTER 7-12-01

7-12-01-01. Adoption of standards.

1. The American national standard safety requirements for the storage and handling of anhydrous ammonia "K61.1 - 1989" is hereby adopted; except sections 2.5, 5.2.1, 5.2.2.1, and 5.2.2.2 of this standard are adopted as amended by North Dakota Century Code section 19-20.2-01.
2. The ~~2004~~ 2010 edition of the American society of mechanical engineers boiler and pressure vessel code, section II; section V; section VIII, division 1; and section IX are hereby adopted and incorporated by reference as a part of this article.
3. The ~~2004~~ 2011 edition of the national board inspection code, an American national standard, is hereby adopted and incorporated by reference as a part of this article.
4. The American society for nondestructive testing standard "SNT-TC-1A" is hereby adopted and incorporated by reference as a part of this article.
5. The ~~2004~~ 2010 edition of ASME B31.3, the American national standard for chemical plant and petroleum refinery piping, is hereby adopted and incorporated by reference as a part of this article.
6. The ~~2004~~ 2010 edition of ASME B31.5, the American national standard for refrigeration piping, is hereby adopted and incorporated by reference as a part of this article.
7. The American petroleum institute standard 620, recommended rules for design and construction of large, welded, low-pressure storage tanks, is hereby adopted and incorporated by reference as a part of this article.

History: Effective July 1, 1996; amended effective June 1, 2005; April 1, 2013.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-03. Administration and enforcement.

1. The administration and enforcement of North Dakota Century Code chapter 19-20.2 and this chapter is the responsibility of the agriculture commissioner.
2. The agriculture commissioner shall conduct initial and periodic inspection of anhydrous ammonia storage facilities ~~is the responsibility of the insurance commissioner to verify compliance with this chapter and any rules adopted under this chapter.~~

3. Owners, users, or vendors of new installations made after July 1, 1995, will not be issued an operator's license until the completed anhydrous ammonia storage facility site has been inspected by the ~~chief boiler inspector~~ agriculture commissioner and complies with this chapter and North Dakota Century Code chapter 19-20.2.
- ~~4.~~ ~~The agriculture commissioner will inform the insurance commissioner of new applications for operating licenses and of any new operating licenses issued.~~
- ~~5.~~ ~~The insurance commissioner will inform the agriculture commissioner of violations of this chapter and violations of North Dakota Century Code chapter 19-20.2.~~
- ~~6.~~ 4. Owners, users, or vendors of anhydrous ammonia must notify the chief boiler inspector of storage containers to be used in North Dakota or brought into the state for temporary purposes.
- ~~7.~~ 5. Containers found, after inspection, to be defective or otherwise unsafe to operate, or disqualified by legal requirements, must be rejected by the ~~chief boiler inspector~~ agriculture commissioner, who may order the container immediately depressurized and taken out of service.
- ~~8.~~ 6. Defective conditions not posing an immediate hazard, noted during initial and periodic inspections, must be corrected in a timely manner. The time allowed for corrections to take place will be at the discretion of the ~~chief boiler inspector~~ agriculture commissioner.
- ~~9.~~ 7. Operating licenses must be posted in a conspicuous place at the plant or office of the owner, user, or vendor and available for inspection during regular business hours.
- ~~10.~~ 8. Anyone spilling one hundred pounds [45.36 kilograms] or more of anhydrous ammonia must report this as soon as possible to the national response center at 1-800-424-8802, to the North Dakota ~~division of emergency management~~ department of emergency services at 701-328-9921, and to the appropriate county emergency manager.
- ~~11.~~ 9. The agriculture commissioner may require compliance with any local siting requirements for the issuance or maintenance of an operating license.

History: Effective July 1, 1996; amended effective April 1, 2013.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-04. General requirements.

1. **Frequency of inspection.** Existing anhydrous ammonia storage facilities must be inspected once every five years by the ~~chief boiler inspector~~ agriculture commissioner. New anhydrous ammonia storage facilities must be inspected by the ~~chief boiler inspector~~ agriculture commissioner prior to any license being issued, and at an interval of once every five years thereafter.
2. **Minimum requirements for new storage containers other than refrigerated storage containers.**
 - a. American society of mechanical engineers constructed and so stamped;
 - b. National board registered;
 - c. Metal specified tensile strength not exceeding seventy thousand pounds per square inch [482636 kilopascals];
 - d. Head and shell materials for storage containers made in accordance with fine grain practice;
 - e. All welds postweld heat treated after construction, for all storage containers ordered or installed after January 1, 1996. An implement of husbandry does not require postweld heat treatment if the implement is fabricated with hot formed heads or with cold formed heads that have been stress relieved; and
 - f. Storage containers exceeding six thousand water gallons [22712.4 liters] in capacity must be equipped with a manhole opening.
3. **Minimum requirements for secondhand and reinstalled storage containers other than refrigerated storage containers.**
 - a. American society of mechanical engineers constructed and so stamped;
 - b. National board registered or the manufacturer's data report furnished to the chief boiler inspector;
 - c. Metal specified tensile strength not exceeding seventy-five thousand pounds per square inch [517500 kilopascals];
 - d. Heat treated heads or hot formed heads and this indicated on the manufacturer's data report, in lieu of the entire vessel welds being postweld heat treated; and

- e. All postconstruction repairs and alterations made only by a valid holder of an "R" certificate of authorization from the national board.
- 4. **Exception for secondhand and reinstalled storage containers.** Metal specified tensile strength may exceed seventy-five thousand pounds per square inch [517500 kilopascals] for secondhand and reinstalled anhydrous ammonia storage containers when the container is relocated within North Dakota and the container has been wet-fluorescent magnetic particle tested by a qualified firm and any stress corrosion cracking found does not extend beyond the minimum required thickness for original maximum allowable working pressure (MAWP). The minimum required thickness must be determined by code calculation, using the original code of construction. In all cases, all stress corrosion cracking must be removed.
- 5. **Requirements for refrigerated storage containers.** Refrigerated storage containers must be constructed in accordance with section 7 of the 1989 ANSI K61.1 standard. All refrigerated ammonia piping used with refrigerated systems must conform to ASME B31.5, American national standard for refrigerated piping.
- 6. **Hydrostatic test procedures.** Hydrostatic test procedures must comply with the specific requirements of the national board inspection code and be conducted in a manner approved by the ~~chief boiler inspector~~ agriculture commissioner. At least one calibrated gauge must be used on the container tested. All air must be vented prior to making the test.
- 7. **Wet-fluorescent magnetic particle test procedures.** Wet-fluorescent magnetic particle test procedures must comply with SNT-TC-1A procedures and the specific requirements of ASME code, section VIII. The person conducting the test must be certified as a level II technician. This test may be witnessed by the ~~chief boiler inspector~~ agriculture commissioner, at the ~~chief boiler inspector's~~ agriculture commissioner's discretion.
- 8. **Welded repairs or alterations, or both, to pressure containers.** Welded repairs or alterations, or both, to pressure containers must only be made by a firm in possession of a valid "R" certificate of authorization from the national board of boiler and pressure vessel inspectors.
- 9. **Requirements for welded piping.** Welders making welds to anhydrous ammonia system piping must be certified in accordance with ASME code, section IX, and must furnish a current QW-484 qualification form upon request. The welder must weld only within the range of the welder's qualifications. Defective weld must be rejected by the ~~chief boiler inspector~~ agriculture commissioner.

10. **Requirements for reinstalled containers and systems.** When a permanent storage container is moved and reinstalled, all fittings and appurtenances must comply with all requirements for new installations.
11. **Prohibitions.** In addition to the prohibitions covered by North Dakota Century Code section 19-20.2-08.1, the following are prohibited:
 - a. Unattended filling of storage containers and nurse tanks;
 - b. Making repairs or addition of appurtenances directly to pressurized storage containers and nurse tanks;
 - c. Painting or obscuring of ASME data plates on containers;
 - d. Painting of hydrostatic, safety and safety relief valves; and
 - e. Filling nonrefrigerated storage containers and nurse tanks beyond the filling densities permitted by ANSI K61.1, section 5.9.1.
 - f. Using ASTM A-53 type F piping for anhydrous ammonia piping systems.

History: Effective July 1, 1996; amended effective April 1, 1998; April 1, 2013.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-05. Specific requirements for nonrefrigerated anhydrous ammonia storage facilities.

1. Facility siting requirements:

- a. The siting of the facility must comply with North Dakota Century Code section 19-20.2-05 and this compliance must be verified by the ~~chief boiler inspector~~ agriculture commissioner.
- b. The facility must be properly licensed by the board of county commissioners in which the facility is located and by the agriculture commissioner.
- c. The facility must be accessible to emergency vehicles.
- d. A facility identification sign must be displayed stating the name, address, and telephone number of the nearest representative, agent, or owner. An emergency telephone number must also be displayed. This sign must be posted near the entrance of the facility. Letters must be at least two inches [50.8 millimeters] high, and the sign visible from no less than fifty feet [15.24 meters].

2. Storage container requirements:

- a. The ASME manufacturer's data report must be provided when requested by the ~~chief boiler inspector~~, agriculture commissioner should repairs, alterations, or metallurgical data be required.
- b. The container must be ASME constructed, if installed after November 1, 1987.
- c. The container must be national board registered, if installed after November 1, 1987. For secondhand and reinstalled storage containers, a manufacturer's data report must be furnished to the ~~chief boiler inspector~~ agriculture commissioner if the container is not national board registered.
- d. The condition of the paint shall be such that no more than ten percent of the tank surface is corroded or missing paint.
- e. Container markings and/or decals must meet the requirements of ANSI K61.1.
- f. Postconstruction repairs and alterations, if made, must meet the requirements of the national board inspection code and the proper documentation must be available for inspection if requested by the ~~chief boiler inspector~~ agriculture commissioner.
- g. Container fittings, nozzles, and welded seams must be in compliance with the code of construction as judged by the requirements of the national board inspection code.
- h. Supports and saddles adequately must support the container as required by ANSI K61.1, and there must be no concentration of excessive loads on the supporting portion of the shell.
- i. A container liquid level gauge must be installed and be operable.
- j. A pressure gauge graduated from zero to four hundred pounds per square inch [0 to 2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the container.
- k. Safety valve manifolds meeting the requirements of ANSI K61.1 must be installed between the container and the safety valves required to be installed.
- l. Container safety valves must be ASME and national board stamped.

- m. Container safety valves must be date current and in operable condition.
- n. Container safety valves must have rain caps in place.
- o. Installed safety valve capacity must comply with appendix B of ANSI K61.1. The installed capacity must be sufficient with a manifold or manifolds in operation as designed by the manufacturer.

3. Requirements for piping and appurtenances:

- a. Excess flow valves must be installed at all tank openings, or in lieu thereof, approved quick-closing internal valves may be installed which, except during operating periods, must remain closed.
- b. Main stop valves must be labeled for anhydrous ammonia service and be in good operating condition.
- c. Main stop valves must be labeled or color coded to indicate liquid or vapor service.
- d. System piping must be at least schedule 40 where welded and schedule 80 where threaded. Threaded and seal welded connections must be at least schedule 80. Piping must be at least ASTM A-53 grade B seamless or electric resistance welded (ERW) pipe. ASTM A-53 type F piping is prohibited.
- e. Welded piping must be welded by an ASME section IX certified welder, and proof of the certification must be available if requested by the ~~chief boiler inspector~~ agriculture commissioner.
- f. Threaded piping must not be used underground for new installations.
- g. Pipe and pipe fittings must not be cast iron, brass, copper, zinc, or galvanized.
- h. Flexible fittings or expansion joints, or both, must be used where necessary.
- i. Underground piping must be installed using approved corrosion protection.
- j. For new systems, the system piping must be pressure tested at the working pressure of the system and the integrity of the system proven.

- k. Approved bulkheads or breakaways, or both, must be provided at nurse tank fill stations. Emergency shutoff valves must be in place on liquid and vapor piping before the bulkhead or breakaways, or both. Approved cables must be connected to the emergency shutoff valves and these cables can be activated both at the valves and at a remote location. Breakaway action will close the valves.
- l. Approved bulkheads and breakaways must be provided at truck unloading stations. There must be an emergency shutoff valve on the vapor piping on the system side of the bulkhead and a backcheck valve is installed on the liquid piping on the system side of the bulkhead. Approved cables must be connected to the emergency shutoff valve and these cables can activate the valve both at the valve and at a remote location.
- m. Date current hydrostatic relief valves must be installed wherever liquid may become trapped between closed valves.
- n. Transfer hoses must be date current and not be weather checked or cut to expose the cords.
- o. Transfer pump, if used, must be rated for anhydrous ammonia service.
- p. A pressure gauge graduated from zero to four hundred pounds per square inch [0 to 2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the discharge side of the pump, before the bypass piping loop. This gauge must be a liquid filled gauge.
- q. Compressors, if used, must be rated for anhydrous ammonia service.
- r. Approved pressure gauges and stop valves must be installed on the suction and discharge sides of the compressor.
- s. An approved date current pressure relief valve of sufficient capacity must be installed on the discharge side of the compressor prior to any shutoff valve.
- t. Locks and lock boxes must be installed on the main system stop valves, when the facility is unattended.
- u. The system must be leak free in operation.
- v. Adequate provisions for protection of exposed piping and appurtenances from moving vehicles at the facility must be in place.

- W. Loading platforms or other equivalent method must be used to allow safe filling of nurse tanks. Climbing on tires is not permitted for filling nurse tanks.
- X. For facilities installed after January 1, 1998, bleeder valves must be installed at truck unloading stations to relieve pressure prior to connecting or disconnecting the truck transfer hoses. The bleeder hoses must be vented to a suitable closed water container.
- Y. Excess flow protection is required for nurse tank filling station risers to shut down ammonia flow should a transfer hose break or a pull-away occur. Storage facilities utilizing bulkheads with emergency shutoff valves below the bulkhead must install the required excess flow valves integral with the riser shutoff valves or as in-line excess flow valves. For these systems, an approved installed location cable must be used between the emergency shutoff valve actuator and the riser shutoff valve. Storage facilities utilizing breakaway devices with positive closure must install excess flow valves integral with the riser shutoff valve or as an approved in-line excess flow valve installed prior to the positive closure device. The installer must verify the operation of any excess flow valve covered by this section. The effective date of this section is July 1, 2006.

4. Requirements for safety equipment:

- a. The following personal safety equipment must be available at a readily accessible location:
 - (1) Two full face gas masks with spare date current ammonia canisters, or two approved self-contained breathing apparatuses suitable for ammonia;
 - (2) One pair of protective gloves impervious to ammonia;
 - (3) Chemical splash goggles that are ANSI Z87.1-1989 rated;
 - (4) One pair of protective boots impervious to ammonia;
 - (5) One "slicker suit" impervious to ammonia;
 - (6) Safety shower or open container holding at least one hundred fifty gallons [567.8 liters] of clean water; and
 - (7) ~~Adequate fire extinguishers~~ One class C fire extinguisher or class C-compatible fire extinguisher.

- b. A telephone, or other method of communication, is required to be on location at each anhydrous ammonia storage facility during transfer operations.

History: Effective July 1, 1996; amended effective April 1, 1998; June 1, 2005; April 1, 2013.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-06. Specific requirements for nurse tanks.

1. The ASME manufacturer's data report must be provided, if requested by the ~~chief boiler inspector~~ agriculture commissioner, should repairs or alterations become necessary.
2. The container must be ASME constructed, if installed after November 1, 1987.
3. The container must be national board registered, if installed after November 1, 1987. ~~For secondhand storage containers, a manufacturer's data report must be furnished to the chief boiler inspector if the container is not national board registered.~~
4. The data plate must be readable and not painted over or obscured.
5. The condition of the paint shall be such that no more than ten percent of the tank surface is corroded or missing paint.
6. Container markings and decals must meet the requirements of ANSI K61.1:
 - a. "1005" department of transportation decal must be in place on sides and heads.
 - b. "ANHYDROUS AMMONIA" decal must be in place on sides and heads.
 - c. "INHALATION HAZARD" decal must be in place on each side.
 - d. Legible transfer and safety decals must be in place.
7. The container must be numbered ~~or otherwise~~ and identified with the name and contact information of the owner.
8. A department of transportation-approved slow moving vehicle sign must be in place and in good condition.
9. Postconstruction repairs and alterations, if made, must meet the requirements of the national board inspection code and the proper

documentation must be available for inspection if requested by the ~~chief boiler inspector~~ agriculture commissioner.

10. Container fittings, nozzles, and welded seams must be in compliance with the code of construction as judged by the requirements of the national board inspection code.
11. A container liquid level gauge must be installed and must be operable.
12. A pressure gauge graduated from zero to four hundred pounds per square inch [0 to 2760 kilopascals] and designated for use in anhydrous ammonia service must be installed on the container.
13. Container safety valves must be ASME and national board stamped.
14. Container safety valves must be date current and in operable condition.
15. Container safety valves must have rain caps in place.
16. The transfer hose, if installed, must be date current and not be weather checked or cut to expose the cords. If the transfer hose is not installed on the nurse tank, an approved male "ACME" type fitting with protective dust cap must be installed on the liquid withdrawal valve.
17. An "ACME" type fitting must be used to secure the transfer hose.
18. Protective gloves and Z87 rated goggles must be in a safety kit attached to the container or assigned to each nurse tank when the container is filled. If the gloves and goggles are assigned, a record of this assignment must be maintained at the office of the facility.
19. Five gallons [18.93 liters] of clean water in a container must be carried on the nurse tank.
20. A hydrostatic relief valve or approved built-in hydrostatic relief must be installed at the main liquid stop valve. This hydrostatic relief valve must be date current and equipped with a rain cap.
21. Protective caps must be in place for the main liquid and vapor connections.
22. Excess flow valves must be in place on the liquid and vapor connections at the tank. Excess flow valves may be incorporated into the main stop valves on the tank.
23. The wagon tires must be in a safe and serviceable condition, with no cords showing, and a tread of at least two-thirty-secondths of an inch.

24. The wagon must be equipped with two suitable safety chains and a hitch pin.
25. The wagon tongue and undercarriage must be in a condition to provide safe transport.
26. The pressure vessel and appurtenances must be leak free in service.
27. Fittings and safety valves must be protected from physical damage, such as rollover, by roll cages or other protective devices.
28. An implement of husbandry may be fabricated from steel having a specified tensile strength not to exceed seventy-five thousand pounds per square inch [517110 kilopascals].

History: Effective July 1, 1996; amended effective April 1, 1998; June 1, 2005; April 1, 2013.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-07. Documented training.

1. Any person handling, transferring, transporting, or otherwise working with anhydrous ammonia at anhydrous ammonia storage facilities must be competent in safe operating practices and be able to take appropriate actions when faced with minor leaks as well as with emergency conditions.
2. Any person making, breaking, or testing any ammonia connection, transferring ammonia, or performing maintenance or repair on an ammonia system under pressure, at anhydrous ammonia storage facilities, must wear protective gloves and chemical splash goggles.
3. Documented training must occur initially and then at intervals of not less than once per year for those persons handling, transferring, transporting, or otherwise working with anhydrous ammonia at anhydrous ammonia storage facilities. Documentation must consist of signed forms indicating the type of training, the date the training occurred, the persons trained, and the supervisor or training coordinator. Signed forms must be kept on file for at least three years and made available for review by the ~~chief boiler inspector and~~ the agriculture commissioner during normal business hours.
4. Training may include audio and video media, demonstrations and lectures, but must include actual hands-on training for those persons initially required to handle, transfer, transport, or otherwise work with ammonia at anhydrous ammonia storage facilities. The type and amount of training must be consistent with the duties and

responsibilities of the person at a particular storage facility. Personnel must be trained for and designated to act in emergency conditions.

History: Effective July 1, 1996; amended effective April 1, 2013.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

7-12-01-08. Alternate procedures for transferring anhydrous ammonia directly from cargo tanks to nurse tanks.

1. Cargo tanks must have current United States department of transportation certification and container labeling and proof of such certification must be furnished to the agriculture commissioner initially and within thirty days of the recertifications required by the department of transportation.
2. Adequately sized wheel chocks must be used to prevent movement of both nurse tanks and cargo tanks prior to the start of any transfer operations.
3. Cargo tanks must have all safety equipment required by ANSI K61.1 - 1989:
 - a. At least five gallons [18.93 liters] of clean water in a container;
 - b. One pair of protective gloves impervious to ammonia;
 - c. A full facepiece gas mask with an ammonia canister and at least one spare canister; and
 - d. Chemical splash goggles.
4. Nurse tanks must be equipped with all safety equipment required by ANSI K61.1 - 1989:
 - a. At least five gallons [18.93 liters] of clean water in a container;
 - b. A legible decal depicting step-by-step ammonia transfer instructions; and
 - c. A legible decal depicting first-aid procedures to follow if injured by ammonia.
5. Transfer operations must take place:
 - a. Only on firm, well-prepared, level surfaces;
 - b. Only during daylight hours, or with proper lighting;

- c. Only on the owner's or consignee's own property, to include rented or leased property;
 - d. At least fifty feet [15.24 meters] from the line of any adjoining property which may be built upon, or any highway or railroad mainline;
 - e. At least four hundred fifty feet [137.16 meters] from any place of public assembly or residence;
 - f. At least seven hundred fifty feet [228.6 meters] from any institutional residence; and
 - g. No closer than one mile [1.61 kilometers] from any city limits.
6. Transfer operations that transfer anhydrous ammonia directly from a bulk delivery vehicle to a separate cargo tank not connected to a truck are prohibited. Transfer operations must be from the bulk delivery vehicle directly to nurse tanks.
7. Initial written notification of intent to transfer anhydrous ammonia from any cargo tank to nurse tanks shall be given to the agriculture commissioner, the board of county commissioners, and the county emergency manager in the county in which transfer operations will take place. This notification must thereafter be made at least thirty days prior to the proposed date of transfer, or on a seasonal basis, prior to March first for the spring-summer season and September first for the fall season. This notification must be made by the owner or the consignee.
8. Any additional requirements of the local jurisdiction (county and township) must be complied with fully.

History: Effective July 1, 1996; amended effective April 1, 1998; June 1, 2005; April 1, 2013.

General Authority: NDCC 19-20.2-01

Law Implemented: NDCC 19-20.2-01

**CHAPTER 7-12-02
ANHYDROUS AMMONIA NURSE TANK AND STORAGE CONTAINER LOCK
PILOT PROGRAM**

[Repealed effective April 1, 2013]

Section

7-12-02-01	Definitions
7-12-02-02	Identification of a Critical Methamphetamine Use Zone
7-12-02-03	General Requirements
7-12-02-04	Enforcement
7-12-02-05	Penalty

~~7-12-02-01. Definitions:~~

- ~~1. "Approved locking device" means a device approved by the insurance commissioner that locks and completely covers a nurse tank or applicator tank liquid withdrawal valve or a storage container main stop valve, including the valve stem and handle, thereby preventing the opening of the valve. The insurance commissioner will maintain a list of approved locking devices.~~
- ~~2. "Empty" means no liquid product is present in a nurse tank, applicator tank, or storage container.~~
- ~~3. "Equipped with" means an approved locking device is on hand and can be installed when required.~~
- ~~4. "Installed" means an approved locking device is actually installed on the liquid withdrawal valve and it is locked to prevent unauthorized opening.~~
- ~~5. "Owner or operator" means the owner or operator of an anhydrous ammonia storage facility and includes persons employed by or acting as the agent of the owner or operator.~~
- ~~6. "Unattended" means a person is not present to monitor the transfer and storage of anhydrous ammonia.~~

History: Effective April 1, 2004.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 19-20.2-11

~~**7-12-02-02. Identification of a critical methamphetamine use zone.** The designated critical methamphetamine use zone is Williams County and McKenzie~~

~~County. The provisions of this chapter apply only to activities within Williams County and McKenzie County.~~

~~History: Effective April 1, 2004.~~

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

~~Law Implemented: NDCC 19-20.2-11~~

~~**7-12-02-03. General requirements.**~~

- ~~1. An owner or operator of an anhydrous ammonia storage facility may not fill a nurse tank or applicator tank unless the tank is equipped with an approved locking device.~~
- ~~2. Unless an anhydrous ammonia nurse tank or applicator tank is empty, an owner or operator of an anhydrous ammonia storage facility may not store an unattended nurse tank or applicator tank at a facility unless the tank has an approved locking device installed. The insurance commissioner may exempt an anhydrous ammonia storage facility from this requirement upon a showing that the facility is equipped with an alternative security device such as fencing or electronic surveillance.~~
- ~~3. Unless an anhydrous ammonia nurse tank or applicator tank is empty, a person in possession of the tank outside of an anhydrous ammonia storage facility must install an approved locking device on the tank if the tank is left unattended overnight.~~
- ~~4. Unless a locking device is integral to the liquid withdrawal valve, a person transporting a nurse tank or applicator tank must remove the locking device during transit.~~
- ~~5. An anhydrous ammonia storage facility owner or operator must be present at the pickup of a nurse tank or applicator tank at an anhydrous ammonia storage facility unless the tank is empty or unless an approved locking device is installed on the tank.~~
- ~~6. A person in possession of a nurse tank or an applicator tank may not drop off the tank at an anhydrous ammonia storage facility if the owner or operator is not present unless the tank is empty or unless an approved locking device is installed on the tank.~~
- ~~7. Anhydrous ammonia may not be transferred from an anhydrous ammonia bulk delivery vehicle to a nurse tank or applicator tank unless the tank is equipped with an approved locking device.~~

- ~~8. A storage container must have approved locking devices installed on the main container stop valves whenever the storage facility is unattended, unless the container is empty.~~

~~History: Effective April 1, 2004.~~

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

~~Law Implemented: NDCC 19-20.2-11~~

~~**7-12-02-04. Enforcement.**~~

- ~~1. The insurance commissioner may bring an action to enjoin the violation or threatened violation of the provisions of this chapter in the district court of the county in which the violation occurs or is about to occur.~~
- ~~2. The insurance commissioner may issue a cease and desist order to any person allegedly violating the provisions of this chapter.~~
- ~~3. The insurance commissioner may collect a civil penalty by a civil action in any appropriate court.~~
- ~~4. The act, omission, or failure of any officer, agent, or other person acting for or employed by any person is deemed to be the act, omission, or failure of the person as well as that of the person employed.~~
- ~~5. The insurance commissioner or the insurance commissioner's authorized agent may inspect a nurse tank, an applicator tank, or a storage container at any reasonable time at any location to assure compliance with this section.~~

~~History: Effective April 1, 2004.~~

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

~~Law Implemented: NDCC 19-20.2-11~~

~~**7-12-02-05. Penalty.** A person who violates any provision of these rules is subject to a civil penalty not to exceed one hundred dollars for a first violation and not to exceed five hundred dollars for a second violation. Thereafter, the penalty provided for in North Dakota Century Code section 19-20.2-10 applies. The civil penalty may be imposed by the insurance commissioner through an administrative hearing and may be in addition to any criminal punishment.~~

~~History: Effective April 1, 2004.~~

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

~~Law Implemented: NDCC 19-20.2-11~~

CHAPTER 7-12-03

7-12-03-01. Scope. The requirements of this chapter apply only to agricultural anhydrous ammonia facilities.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 19-20.3

7-12-03-02. Incorporation by reference. The provisions of 40 CFR part 68 as they existed on June 30, 2011, are incorporated by reference into this chapter, with the following exceptions:

1. Where the term "stationary source" appears in 40 CFR part 68, for the purposes of this chapter only reference the term "agricultural anhydrous ammonia facility" as defined in section 7-12-03-03.
2. Not adopted by reference in 40 CFR section 68.120.
3. Not adopted by reference are 40 CFR section 68.210, and 40 CFR section 68.215.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 19-20.3

7-12-03-03. Definitions. The definitions in 40 CFR part 68 apply to this chapter. The following additional definitions also apply:

1. "Agricultural anhydrous ammonia facility" means any facility that has at least ten thousand pounds [4535 kilograms] of storage capacity and stores anhydrous ammonia intended to be used as a fertilizer or in the manufacturing of a fertilizer.
2. "Fertilizer" means any substance regulated as a fertilizer under North Dakota Century Code chapter 19-20.1.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 19-20.3

CHAPTER 7-13-01

7-13-01-03. Federal law. All federal meat and poultry inspection regulations effective as of ~~January 1, 2009~~ December 1, 2012, as provided under title 9, Code of Federal Regulations, parts 301-320, 325, 329, 381, 391, 416-417, 418, 424, 430, 441, 442, and 500, but excluding parts 307.5 and 381.38, are incorporated by reference and made a part of this title.

History: Effective August 1, 2000; amended effective January 1, 2004; July 1, 2009; April 1, 2013.

General Authority: NDCC 36-24-24

Law Implemented: NDCC 36-24-18, 36-24-24

TITLE 10
ATTORNEY GENERAL

APRIL 2013

CHAPTER 10-16-05

10-16-05-01. Game description. To play HOT LOTTO®, a player selects five different white numbers, between one and ~~thirty-nine~~ forty-seven, and one additional orange number (hot ball) between one and nineteen. The additional number may be the same as one of the first five numbers selected. The price of a play is one dollar. A gross grand prize amount is paid, ~~at the election of a winning player or by a default election either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for the prize pool on a pari-mutuel basis.~~ A set prize (cash prize of ~~ten~~ thirty thousand dollars or less) is paid on a single-payment cash basis. Draws are held every Wednesday and Saturday.

History: Effective February 1, 2004; amended effective April 1, 2006; May 12, 2013.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

10-16-05-02. Expected prize pool percentages and odds. The minimum gross grand prize is one million dollars and is paid on a pari-mutuel basis. Except as provided by rule, a set prize must be paid according to these matches per play and prize amounts with these expected prize payout percentages:

<u>Matches Per Play</u>	<u>Prize</u>	<u>Prize Pool Percentage Allocated to Prize</u>	<u>Odds*</u>
5 white + 1 orange	<u>Gross Grand prize**</u>	52.58% <u>52.12%</u>	1:10,939,383 <u>1:29,144,841</u>
5 white + 0 orange	\$10,000 <u>\$30,000</u>	3.29% <u>3.71%</u>	1:607,744 <u>1:1,619,158</u>
4 white + 1 orange	\$500 <u>\$3,000</u>	1.55% <u>4.32%</u>	1:64,349 <u>1:138,785</u>
4 white + 0 orange	\$50 <u>\$100</u>	2.80% <u>2.59%</u>	1:3,575 <u>1:7,710</u>
3 white + 1 orange	<u>\$50</u>	5.13% <u>2.95%</u>	1:1,950 <u>1:3,385</u>
3 white + 0 orange	\$4 <u>\$6</u>	7.38% <u>6.38%</u>	1:108 <u>1:188</u>

2 white + 1 orange	\$4 \$6	4.38% <u>4.73%</u>	4:183 <u>1:254</u>
1 white + 1 orange	\$3	12.72% <u>11.52%</u>	4:47 <u>1:52</u>
0 white + 1 orange	\$2	10.17% <u>11.68%</u>	4:39 <u>1:34</u>

Overall odds of winning a prize on a one dollar play are ~~4:16~~ 1:17.22.

*Reflects the odds of winning and probable distribution of winning plays in and among each prize tier, based on the total number of possible combinations.

**The gross grand prize amount will be reduced by federal and state withholding taxes which will be remitted by the lottery on behalf of the prize winner with the prize winner receiving the residual amount as the prize winner's grand prize payment (subject to any setoff requirements).

History: Effective February 1, 2004; amended effective April 1, 2006; May 12, 2013.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

10-16-05-04. Prize pool and payment.

1. The prize pool for all prize categories must consist of fifty percent of each draw period's sales after the prize reserve account is funded.
2. The prize money allocated to the gross grand prize pool must be divided equally by the number of plays that win the grand prize. If the gross grand prize is not won in a draw, subject to any restrictions by the game group, the prize money allocated for the gross grand prize must roll over and be added to the gross grand prize pool for the next draw.
3. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.
4. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.
5. An annuitized grand prize must be paid annually in twenty-five equal payments with the initial payment being made in cash, to be followed by twenty-four payments funded by the annuity. A gross grand prize winner will receive a withholding taxes paid prize where the lottery pays the prize winner a net prize amount, which consists of the lottery reducing the gross grand prize amount by the required federal and state withholding taxes, and withholding and depositing on behalf of the prize winner the required federal and state withholding taxes on the gross grand prize amount and the lottery paying the prize winner the residual amount (subject to any setoff requirements).

6. The advertised grand prize amount will be publicly announced as the grand prize for the drawing. The advertised grand prize amount is not the gross grand prize amount. The advertised grand prize is the minimum cash amount the prize winner receives, on a pari-mutuel basis, after the lottery reduces the gross grand prize amount by the required federal and state withholding taxes (subject to any setoff requirements).

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008; May 12, 2013.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

10-16-05-06. Triple sizzler option.

1. The triple sizzler option is a limited extension of the HOT LOTTO® game and is conducted according to the game group's game rules. The option offers the owner of a qualifying play a chance to multiply the amount of a set prize.
2. A qualifying play is a single HOT LOTTO® play for which the player pays an extra one dollar for the triple sizzler option. The triple sizzler option does not apply to the grand prize. A qualifying play which wins one of the eight set prizes will be multiplied by three. The game group may change the multiplier number three for a special promotion.
3. A prize awarded must be paid as a lump sum set prize. Instead of the normal set prize amount, a qualifying triple sizzler play will pay the amounts shown below:

<u>Matches Per Play</u>	<u>Prize</u>	<u>3x</u>
5 white + 0 orange	\$10,000 <u>\$30,000</u>	\$30,000 <u>\$90,000</u>
4 white + 1 orange	\$500 <u>\$3,000</u>	\$1,500 <u>\$9,000</u>
4 white + 0 orange	\$50 <u>\$100</u>	\$150 <u>\$300</u>
3 white + 1 orange	\$50	\$150
3 white + 0 orange	\$4 <u>\$6</u>	\$12 <u>\$18</u>
2 white + 1 orange	\$4 <u>\$6</u>	\$12 <u>\$18</u>
1 white + 1 orange	\$3	\$9
0 white + 1 orange	\$2	\$6

Rarely, under the game group's limitation of liability rules, a set prize amount may be less than the amount shown. In that case, the triple sizzler prizes will be a multiple of the new set prize amounts. For example, if the match 5+0 set prize

amount of thirty thousand dollars becomes twenty-seven thousand dollars under the game group's rules, a triple sizzler player winning that prize amount would win eighty-one thousand dollars (\$27,000 x 3).

History: Effective January 3, 2008; amended effective May 12, 2013.

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

TITLE 13
DEPARTMENT OF FINANCIAL INSTITUTIONS

APRIL 2013

CHAPTER 13-04-02
COLLECTION AGENCIES

Section	
13-04-02-01	Definitions
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13-04-02-03	Debt Collectors - Approval —Certificate
13-04-02-04	Prohibited Practices
13-04-02-05	Threats or Coercion Prohibited
13-04-02-06	Harassment or Abuse Prohibited
13-04-02-07	Unreasonable Publication Prohibited
13-04-02-08	Fraudulent, Deceptive, or Misleading Representations Prohibited
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13-04-02-12	Disbursements From the Trust Account
13-04-02-13	Receipts For Collection of Currency and Coin
13-04-02-14	Statement Furnished Upon Request

13-04-02-01. Definitions.

1. ~~"Claim" means any obligation or alleged obligation out of a consumer transaction.~~
2. ~~"Debt collection" means any action, conduct, or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due a creditor by a consumer.~~
3. 1. "Debt collector" means any collection agency, employee of a collection agency, and any person engaging, directly or indirectly, in debt collection, and includes any person who sells, or offers to sell, forms represented to be a collection system, device, or scheme, intended or calculated to be used to collect claims; ~~except attorneys at law, licensed real estate brokers, banks, trust companies, building and loan associations, abstract companies doing an escrow business, creditors~~

~~collecting their own debts, individuals or firms who purchase or take accounts receivable for collateral purposes, individuals employed in the capacity of credit person upon the staff of an employer not engaged in the business of a collection agency, or any public officer, receiver, or trustee acting under the order of a court~~ debts and the person is required to be licensed under North Dakota Century Code chapter 13-05.

2. "Debtor" means any person who is subject to debt.
3. "Person" means a person as defined under North Dakota Century Code section 1-01-49.

History: Amended effective July 1, 1984; April 1, 2013.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-01, 13-05-02, ~~13-05-03, 13-05-04, 13-05-05, 13-05-06, 13-05-07, 13-05-08, 13-05-09, 13-05-10~~

13-04-02-02. Prohibited advertising and communications. No collection agency or debt collector shall:

1. Publish or cause to be published any list of debtors, except for credit reporting purposes, advertise or threaten to advertise for sale any ~~claim~~ debt as a means of forcing payment thereof, or use similar devices or methods of intimidation.
2. Communicate with debtors in a misleading or deceptive manner by using the stationery of a lawyer, forms or instruments which only lawyers are authorized to prepare, or instruments which simulate the form and appearance of judicial process.
3. Exercise authority on behalf of a creditor to employ the services of lawyers unless the creditor has specifically authorized the agency in writing to do so, and the agency's course of conduct is always consistent with a true relationship of attorney and client between the lawyer and the creditor.
4. Refuse to return any ~~claim or claims~~ debt and all valuable papers deposited with a ~~claim or claims~~ debt upon written request of the creditor, claimant, or forwarder after tender of such amounts due and owing to the agency within thirty days after such request; neglect, refuse, or intentionally fail to account to its clients for all money collected within forty-five days from the last day of the month in which the same is collected; or refuse or fail to furnish at intervals of not less than ninety days upon written request of the claimant or forwarder, a written report upon ~~claims~~ debts received from such claimant or forwarder.
5. In collection letters or publications, or in any communication, oral or written, threaten wage garnishment or legal suit without an objective

intention to engage a lawyer and commence legal action upon the debtor's failure to comply with the request or demand made.

6. Use or employ constables, sheriffs, or any other officer authorized to serve legal papers in connection with the collection of a ~~claim~~ debt, except when performing their legally authorized duties.

History: Amended effective July 1, 1984; April 1, 2013.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-02, 13-05-06

13-04-02-03. Debt collectors - Approval -~~Certificate~~. Licensed collection agencies may only appoint debt collectors who are of good moral character, are knowledgeable in collection agency practices and ethics, have a good credit reputation, and have a reputation for fair and honest dealings. The name and address of a person appointed as a debt collector must be forwarded to the department by the licensed collection agency. ~~The department, upon request by a collection agency located in North Dakota, may issue an identification card bearing the name of the debt collector and the name of the licensed collection agency. All debt collectors' identification cards are issued for an indefinite period. The identification cards of all debt collectors which are issued must be canceled and turned in to the department if the debt collector ceases to be employed by a licensed agency or upon cancellation of the agency's license.~~

History: Amended effective July 1, 1984; July 1, 1998; April 1, 2013.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-03(4)

13-04-02-04. Prohibited practices. No debt collector may:

1. Perform legal services, furnish legal advice, or falsely represent, directly or by implication, that the debt collector is an attorney.
2. Solicit assignments of claims for the purpose of suit or at the instigation of an attorney.
3. Institute judicial proceedings on behalf of other persons except on an assigned ~~claim~~ debt.
4. Communicate with debtors in the name of an attorney or upon stationery or other written matter bearing an attorney's name.
5. Make any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a ~~claim~~ debt.

6. Violate sections 804 through 810 of the Federal Fair Debt Collection Practices Act [Pub. L. 90-321; 91 Stat. 876 through 880; 15 U.S.C. 1692b through 1692h].

History: Amended effective July 1, 1984; October 1, 1997; April 1, 2013.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

13-04-02-05. Threats or coercion prohibited. No debt collector may collect or attempt to collect any ~~money alleged to be due and owing~~ debt by means of any threat, coercion, or attempt to coerce. Without limiting the general application of the foregoing, no debt collector may:

1. Use, or expressly or implicitly threaten the use of violence or other criminal means, to cause harm to the person, reputation, or property of any person.
2. Accuse or threaten to accuse any person of fraud or any other crime, or any conduct which, if true, would tend to disgrace such other person, or in any way subject the person to ridicule or any conduct which, if true, would tend to disgrace the person, or in any way subject the person to the ridicule or contempt of society.
3. Make to another person, including any credit reporting agency, false accusations, or threats of false accusations, that a ~~consumer~~ debtor is willfully refusing to pay a just debt.
4. Threaten to sell or assign to another the obligation of the ~~consumer~~ debtor with an attending representation or implication that the result of such sale or assignment would be that the ~~consumer~~ debtor would lose any defense to the ~~claim~~ debt or would be subjected to harsh, vindictive, or abusive collection attempts.
5. ~~Threaten to take any action prohibited by law relating to the debt collector's conduct on the rights and liabilities of all parties~~ Represent that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person, unless such action is lawful and the debt collector or creditor intends and is legally entitled to bring such action.

History: Amended effective July 1, 1984; April 1, 2013.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

13-04-02-06. Harassment or abuse prohibited. No debt collector may oppress, harass, or abuse any person in connection with the collection of or attempt to collect any ~~claim~~ debt alleged to be due and owing by that person or another. Without limiting the general application of the foregoing, no debt collector may:

1. Use profane or obscene language or language that is intended to abuse the hearer or reader.
2. Place telephone calls without disclosure to the debtor of the caller's true identity, including name and collection agency.
3. Cause expense to any person in the form of long distance telephone tolls, telegram fees, or other charge incurred by a medium of communications, by concealment of the true purpose of the notice, letter, message, or communication.
4. Cause a telephone to ring or engage any person in telephone conversation repeatedly or continuously, or at unusual times or times known to be inconvenient.

History: Amended effective July 1, 1984; April 1, 2013.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

13-04-02-07. Unreasonable publication prohibited. No debt collector may unreasonably publicize information relating to any alleged indebtedness or debtor. Without limiting the general application of the foregoing, no debt collector may:

1. Communicate any information relating to a ~~consumer's~~ debtor's indebtedness to any employer or the employer's agent except as reasonably necessary for legal process or to effectuate a past judgment judicial remedy.
2. Disclose, publish, or communicate information relating to a ~~consumer's~~ debtor's indebtedness to any relative or family member of the ~~consumer debtor~~, excluding the husband or wife, except through proper legal action or process or with the express consent of the debtor.
3. Disclose, publish, or communicate any information relating to a ~~consumer's~~ debtor's indebtedness to any other person, by publishing or posting any list of ~~consumers debtors~~, commonly known as deadbeat lists, by advertising for sale any claim to enforce payment ~~thereof of a~~ debt, or in any manner other than through proper legal action, process, or proceeding.
4. Use any form of communication to the ~~consumer~~ debtor, which ordinarily may be seen by any other person, that displays or conveys any information about the alleged ~~claim~~ debt other than the return address and phone number of the debt collector.

History: Amended effective July 1, 1984; April 1, 2013.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

13-04-02-08. Fraudulent, deceptive, or misleading representations prohibited. No debt collector may use any fraudulent, deceptive, or misleading representation or means to collect or attempt to collect ~~claims~~ debts or to obtain information concerning ~~consumers~~ debtors. Without limiting the general application of the foregoing, no debt collector may:

1. Use any name while engaged in the collection of ~~claims~~ debts other than the debt collector's true name unless the assumed name is registered with the department as an alias for the debt collector.
2. Make misleading representations in any communication made to collect or attempt to collect a ~~claim~~ debt or to obtain or attempt to obtain information about a ~~consumer~~ debtor.
3. Falsely represent that the debt collector has information in the debt collector's possession or something of value for the ~~consumer~~ debtor in order to solicit or discover information about the ~~consumer~~ debtor.
4. Fail to clearly disclose the name and full business address of the person to whom the ~~claim~~ debt has been assigned or is owed at the time of making any demand for money.
5. Falsely represent or imply that any debt collector is vouched for, bonded by, affiliated with, or is an instrumentality, agent, or official of this state or any agency of federal, state, or local government.
6. Falsely represent the character, extent, or amount of a ~~claim~~ debt against a ~~consumer~~ debtor, or of its status in any legal proceeding.
7. Use, distribute, or sell any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval.
8. Represent that an existing obligation of the ~~consumer~~ debtor may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation.
9. Falsely represent, or give a false impression about the status or true nature of or the services rendered by the debt collector or the debt collector's business.

History: Amended effective July 1, 1984; October 1, 1997; April 1, 2013.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

13-04-02-09. Unfair or unconscionable means prohibited. No debt collector may use unfair or unconscionable means to collect or attempt to collect any ~~claim~~ debt. Without limiting the general application of the foregoing, no debt collector may:

1. Seek or obtain any written statement or acknowledgment in any form that specifies that a ~~consumer's~~ debtor's obligation is one incurred for necessities of life where the original obligation was not in fact incurred for such necessities.
2. Seek or obtain any written statement or acknowledgment in any form containing an affirmation of any obligation by a ~~consumer~~ debtor who has been declared bankrupt, without clearly disclosing the nature and consequences of such affirmation and the fact that the ~~consumer~~ debtor is not legally obligated to make such affirmation.
3. Collect or attempt to collect from the ~~consumer~~ debtor any part or all of the debt collector's fee or charge for services rendered.
4. Collect or attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is expressly authorized by law or by the agreement creating the obligation and legally chargeable to the ~~consumer~~ debtor.
5. Communicate with a ~~consumer~~ debtor whenever it appears that the ~~consumer~~ debtor is represented by an attorney and the attorney's name and address are known unless the attorney has failed to respond to a communication within thirty days or the debt collector has been advised by the debtor or attorney that the attorney no longer represents the debtor.

History: Amended effective July 1, 1984; April 1, 2013.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

13-04-02-13. Receipts for collection of currency and coin. No debt collector may accept currency or coin as payment for a ~~claim~~ debt without issuing an original receipt to the debtor and maintaining a duplicate receipt as a part of the debt collector's permanent records.

History: Effective July 1, 1984; amended effective April 1, 2013.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-07

CHAPTER 13-05-01 MONEY BROKERS

Section

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13-05-01-02	Contracts to Be in Writing
13-05-01-03	Full Disclosure Required
13-05-01-04	Contents of Loan Disclosure Statement
13-05-01-05	Restrictions on Chargeable Costs and Expenses
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13-05-01-07	Availability of Records
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13-05-01-09	Notice to Borrower Regarding Regulation by the Department of Financial Institutions
13-05-01-10	Copy of Written Contracts to the Potential Borrower
13-05-01-11	Unprofessional Conduct and Grounds for Revocation of License

13-05-01-04. Contents of loan disclosure statement. Whenever a money broker arranges a loan for a borrower, the following loan disclosure ~~statement~~ statements must be prepared by the money broker for the borrower and set forth in a plain language and meaningful order:

1. **Summary of loan terms.** Money brokers must provide all loan disclosures mandated under title 12, Code of Federal Regulations, part 1024 and title 12, Code of Federal Regulations, part 1026.
 - ~~a. Principal amount of loan.~~
 - ~~b. Estimated deductions from principal amount.~~
 - ~~(1) Costs and expenses.~~
 - ~~(2) Brokerage commission.~~
 - ~~(3) Liens and other amounts to be paid on authorization of borrower.~~
 - ~~(4) Any other deductions.~~
 - ~~c. Estimated cash payable to borrower.~~
2. **General information concerning loans.**
 - a. The amount of principal and interest payable, the interest rate, the number of payments and whether they are monthly or quarterly, and whether there is a final or balloon payment to pay off the loan in full. If there is a balloon payment, the following cautionary instructions must be printed in bold type

on the contract: CAUTION TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN DUE, IT MAY BE NECESSARY FOR YOU TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY FOR THIS PURPOSE AND YOU MAY BE REQUIRED TO AGAIN PAY COMMISSION AND EXPENSES FOR ARRANGING THE LOAN. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THE LOAN THAT YOU OBTAIN AT THIS TIME.

- b. Other information necessary, including the land description, types of instruments to be executed, and type of lien that will be against the property if the instruments are executed.
- c. Any prepayment penalty on full disclosure of the terms thereof.
- d. Whether credit life or credit disability will be required of the borrower as a condition of making the loan.

~~3. **Deductions from loan proceeds.**~~

- ~~a. Estimated costs and expenses to be paid by the borrower out of the principal amount of the loan, including appraisal fees, escrow fees, abstract or title insurance fees, notary fees, attorney's fees, recording fees, credit investigation fees, and other costs and expenses.~~
- ~~b. An estimate of the liens and other amounts to be paid out of the principal amount of the loan, on authorization of the borrower, including fire or other property insurance premiums, credit life or disability insurance premiums, beneficiary statement fees, reconveyance or similar fees, or liens against property securing the loan or other fees.~~

- ~~4. **Estimated figures.** All figures which are estimates must be clearly identified as such and a statement must be included specifying whether or not the borrower may refuse to accept the commitment if the estimates are exceeded by a specified percent, and, if so, the contract must set forth the specified percent.~~

~~Disclosures must be made in plain English and set forth in meaningful order.~~

History: Effective February 1, 1984; amended effective April 1, 2013.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-01, 13-04.1-06, 13-04.1-07

~~**13-05-01-06. Filing of annual reports.** Every money broker licensee operating as a money broker shall file an annual report with the department of financial institutions. This must be done at the time of submitting the application for renewal of license on the forms supplied with the renewal application. If the~~

~~department of financial institutions deems that further inquiry is necessary, the money broker shall give specific details on any transaction to the department of financial institutions. Repealed effective April 1, 2013.~~

History: ~~Effective February 1, 1984; amended effective June 1, 2002.~~

General Authority: ~~NDCC 13-04.1-01~~

Law Implemented: ~~NDCC 13-04.1-05~~

CHAPTER 13-06-01
DEFERRED PRESENTMENT SERVICE PROVIDERS

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13-06-01-15	Surrender of License
13-06-01-16	Advertising
<u>13-06-01-16.1</u>	<u>Database</u>
<u>13-06-01-16.2</u>	<u>Database Transaction Requirements</u>
<u>13-06-01-16.3</u>	<u>Cancellation, Modification, or Closing of Transactions on Database</u>
<u>13-06-01-16.4</u>	<u>Database Transaction Fees</u>
13-06-01-17	Enforcement

13-06-01-01. Definitions. As used in this chapter:

1. "Annual percentage rate" means a measure of the cost of credit, expressed as a yearly rate, as calculated under the Truth in Lending Act [15 U.S.C. 1601].
2. "Closed transaction" or "close" means a completed deferred presentment service transaction that has been closed on the database.
3. "Close of business" means the time of day that a provider closes its office to the public for the calendar day.
4. "Database" means the statewide transactional database administered by the department pursuant to North Dakota Century Code chapter 13-08.
5. "Database vendor" means the vendor contracted with the department for the purpose of developing and administering the daily operations of the database.
- 2- 6. "Date of the transaction" means the date on which the written agreement is signed and the funds are advanced.

- ~~3-~~ 7. "Deferred presentment service provider" means an entity often referred to as a payday loan, payday advance, or deferred deposit loan provider.
- 8. "Department" means the North Dakota department of financial institutions.
- ~~4-~~ 9. "Financial responsibility" means a financial condition, at a minimum, that is a positive net worth as disclosed in the most recent financial statement.
- ~~5-~~ 10. "Generally accepted accounting practices" means procedures adopted by the American institute of certified public accountants and federal accounting standards boards.
- ~~6-~~ 11. "Maturity date" means the date agreed upon by a licensee and ~~check maker~~ customer to present a check for final payment. "Maturity date" may also be referred to as date of negotiation, date of presentment, or presenting a check for payment.
- 12. "Open transaction" or "open" means a deferred presentment service transaction which has been registered and recorded but not completed on the database.
- ~~7-~~ 13. "Principal shareholders" means any shareholders which control directly or indirectly the power to vote twenty-five percent or more of the voting shares of the corporation.
- 14. "Recorded" means the database has assigned a transaction authorization number to a registered transaction, logged it as an open transaction, and communicated the transaction authorization number to the deferred presentment provider.
- 15. "Registered" means that a deferred presentment provider has provided to the database the information required to identify a valid deferred presentment transaction.
- ~~8-~~ 16. "Transaction" means a deferred presentment service transaction.
- ~~9-~~ 17. "Unencumbered assets" means any assets when a market value can be readily determined and which are not pledged or held under a security interest.

History: Effective July 1, 2001; amended effective April 1, 2013.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-01

13-06-01-07. Reports of commissioner. Written reports in this section must be on a form prescribed by the commissioner. Written reports that are required

by the commissioner to be filed within fifteen calendar days of the occurrence of the events are:

- ~~1.~~ ~~On or before April fifteenth of each year, the licensee shall file with the commissioner a financial report as of March thirty-first, relating to all transactions made by the licensees.~~
- ~~2.~~ 1. A report of the name change of the licensee must be filed with the department prior to the name change.
- ~~3.~~ 2. Whenever a licensee desires to change the licensed place of business, the licensee shall provide the department with the following prior to the relocation:
 - a. A written notice providing the complete address of the new location.
 - b. Photographs of both the exterior and interior of the new location.
 - c. A written sworn statement that the new location will not share the premises with that of another business.
 - d. A report of a change of management of the licensee.
 - e. The original license for reissue.

History: Effective July 1, 2001; amended effective April 1, 2013.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-08(4)

13-06-01-10. Required records. Every licensee shall keep the following records:

- 1. Transaction register.**
 - a. The transaction register must contain the original entry and be a permanent record, and must show for every transaction the ~~account~~ transaction number, date of transaction, maturity date, date of rollover and new maturity date if any, amount of transaction, name of ~~check maker and all other accountholders on that account~~ customer, and the amount of fees expressed in dollar amount.
 - b. The transaction register must be kept numerically by transaction number in the order made and must have headings for each of the items required.
- 2. An individual account record.** An individual account record must be kept for each ~~check maker~~ customer. Such account record must show the name and address of the ~~check maker~~ customer, ~~co-makers,~~

transaction number, date of transaction, maturity date, and fee expressed in dollar amount.

3. **File of all original papers.** A separate file shall be maintained for each ~~check-maker~~ customer and shall contain the written agreement and acknowledged copy of the disclosure statement of transaction. Evidence of disclosure must be retained for six years from the date of the transaction. When prior written approval has been obtained from the commissioner, a licensee may maintain these files in any medium or format that accurately reproduces original documents or papers.
4. **Check copies.** Copies of checks received in the deferred presentment service transaction.
5. **Cash book.** All receipts and disbursements, of any amount whatsoever, must be entered in the cash book or equivalent record on the day they occur. Separate headings must be provided for payments and fees collected from ~~check-makers~~ customers. The cash book must be a record of all details of income and disbursements, including all entries to individual accounts of ~~check-makers~~ customers.
6. **Alphabetical record of ~~check-makers and co-makers~~ customers.** The alphabetical record must show the ~~account~~ transaction number and the name of each ~~check-maker and co-maker~~ customer who is currently indebted to the licensee, with sufficient information to locate the account record.
7. **Permanent file.** Each licensee shall maintain a permanent file which includes the following:
 - a. A copy of all correspondence sent to or received from the department within the past twenty-four months.
 - b. A copy of the last two examination reports and any related correspondence.
8. **Check record.** A record must be retained of each check presented for negotiation, including checks deposited, cashed, and checks presented directly to the ~~check-maker's~~ customer's issuing bank.
9. ~~**Renewal record.** A record must be retained of all renewals as a separate record.~~
- 40: 9. **Returned checks.** A record must be retained of all checks returned for nonsufficient funds, account closed, or stop payment.
- 44: 10. **Rescinded transactions.** A record must be retained of all rescinded transactions by ~~check-maker~~ customer as a separate record.

Erasures may not be made in the payment and charge sections of any account records or written agreements. In case of error, a line must be drawn in ink through the improper entry and the correct entry made on the following line. The entries on the record must correspond with the receipts given the ~~check maker~~ customer.

Records of transactions made under North Dakota Century Code chapter 13-08 must be kept separate or readily identifiable from other types of business conducted in the office.

Electronic data processing, combination forms, and special office systems may be used if in accordance with generally accepted accounting practices and must contain the information required by this section.

History: Effective July 1, 2001; amended effective April 1, 2013.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-11

13-06-01-12. Credit practices. Any deferred presentment service provider that contracts with a third-party collection service in an attempt to collect nonsufficient funds, account closed, stop payment orders, or any other returned checks shall provide in the contract a notice of the twenty dollar maximum allowed returned check charge collected per ~~year per check maker~~ transaction.

A licensee while collecting or attempting to collect an alleged debt may not engage in any of the following acts:

1. Using or threatening to use force, violence, or physical harm to a ~~check maker~~ customer or the ~~check-maker's~~ customer's family or property.
2. Threatening arrest or criminal prosecution when no basis for such action lawfully exists.
3. Threatening the seizure, attachment, and sale of a ~~check-maker's~~ customer's property when such action can only be taken pursuant to court order unless disclosure is made that prior court proceedings are required.
4. Disclosing or threatening to disclose information adversely affecting a ~~check-maker's~~ customer's reputation for creditworthiness with knowledge or reason to know such information is false.
5. Threatening to initiate or initiating communication with a ~~check-maker's~~ customer's employer.
6. Communicating or threatening to communicate with a ~~check maker~~ customer or the ~~check-maker's~~ customer's family with such unreasonable frequency as to constitute harassment or at

times reasonably considered to be unusual hours or known to be inconvenient.

7. Using profane, obscene, or abusive language with a ~~check-maker~~ customer or the ~~check-maker's~~ customer's family.
8. Disclosing or threatening to disclose information relating to a ~~check-maker's~~ customer's indebtedness to any other person except when such other person has a legitimate business need for the information.
9. Disclosing or threatening to disclose information concerning the existence of a debt, which the licensee knows to be reasonably disputed by the ~~check-maker~~ customer, without disclosing the fact that the debt is disputed.
10. Attempting or threatening to attempt enforcement of a right or remedy with knowledge or reason to know that the right or remedy does not exist.
11. Using any form of communication simulating legal or judicial process which gives the appearance of being authorized, issued, or approved by a governmental agency or official or attorney at law when it is not.
12. Using badges, uniforms, or other indicia of any governmental agency or official except as authorized by law.
13. Misrepresenting the amount of the debt alleged to be owed.
14. Representing that an alleged debt may be increased by the addition of attorney's fees, investigation fees, or any other fees or charges when there is no contractual or statutory authorization for such addition.

History: Effective July 1, 2001; amended effective April 1, 2013.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-12~~(7)~~

13-06-01-13. General.

1. The deferred presentment service check must be presented for payment within ~~forty-six~~ sixty days of the original transaction date.
2. When a payment is made in cash, the licensee shall give a receipt to the ~~check-maker~~ customer.
3. Unless otherwise authorized by subsection 14 of North Dakota Century Code section 13-08-12, no other business may be conducted at the licensed location unless authorized in writing by the commissioner. The commissioner's authorization will be predicated upon the licensee's agreement to the following:

- a. That the authorization will not conceal nor facilitate concealment of an evasion of North Dakota Century Code chapter 13-06.
- b. To comply with any applicable state or federal statutes and regulations.
- c. To obtain any license or registration required by a federal, state, or local governmental agency to engage in the other business authorized.
- d. That the commissioner may examine all records and investigate any or all transactions of the licensee.
- e. That the commissioner retains the right, upon notice and opportunity to be heard, to alter, amend, or revoke another business authorization.
- f. That if any federal or state statute or regulation enacted thereafter prohibits the activity, the authorization shall become null and void immediately.

History: Effective July 1, 2001; amended effective April 1, 2013.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-12

13-06-01-14. Written agreement. ~~At the time any transaction is made and funds are advanced, the licensee shall give to the maker of the check a signed written agreement. The written agreement must contain the following:~~ Repealed effective April 1, 2013.

- ~~1. The name of the licensee.~~
- ~~2. The name and address of the check maker.~~
- ~~3. The date of the transaction.~~
- ~~4. The amount of the check.~~
- ~~5. The total amount of fees charged, expressed as a dollar amount and as an annual percentage rate.~~
- ~~6. The date of negotiation of the check.~~
- ~~7. The signature of the check maker.~~
- ~~8. A statement that a licensee may not renew a transaction more than once.~~

- ~~9. A statement that the renewal fee cannot exceed twenty percent of the amount being renewed.~~
- ~~10. The maximum term of the transaction, including the renewal, may not exceed forty-five days.~~
- ~~11. The term of the renewal period may not be less than fifteen days.~~
- ~~12. A renewal agreement must be contained in a separate section, as part of the original written agreement or in other form as approved by the commissioner. The renewal agreement must restate the transaction date, the amount of the check paid to the check maker, the fee charged in dollars and annual percentage rate, and maturity date.~~
- ~~13. A statement containing the right of rescission must be printed immediately above the signature line of the written agreement and must be in a minimum of ten-point font. A space must be provided for the check maker to initial that notice of the right of rescission was received.~~

~~History: Effective July 1, 2001.~~

~~General Authority: NDCC 13-08-10~~

~~Law Implemented: NDCC 13-08-12~~

13-06-01-16.1. Database. The commissioner may directly administer, or contract with a third-party vendor to operate and maintain a website on behalf of the department, in which each transaction shall be recorded for the purpose of preventing violations of North Dakota Century Code chapter 13-08. Each transaction shall be registered with the database and receive a transaction authorization number evidencing the transaction as being recorded in the database prior to a licensee giving currency or a payment instrument to the customer. As part of the registration process, the licensee shall choose an employee to serve as the licensee's security administrator to act as a point of contact for matters relating to the database administration.

History: Effective April 1, 2013.

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-02

13-06-01-16.2. Database transaction requirements.

- 1. Prior to engaging in any transaction, a licensee must:
 - a. Access the vendor database using the assigned user identification and password provided to each employee by the security administrator for the licensee.
 - b. Conduct a search of the database based upon either a social security number, alien registration number, or individual taxpayer

identification number of the customer seeking a new transaction. The database will provide the result of the search indicating whether the customer is eligible or ineligible to enter into a new transaction.

- c. If the customer is eligible for a new transaction, the licensee shall submit all of the required information regarding a customer necessary to have the transaction registered on the database.
 - d. Once all of the required information has been submitted to the database, and the customer's eligibility is confirmed, the transaction will be recorded as open on the database, assigned a transaction authorization number, and the transaction authorization number will be communicated to the licensee as evidence that the transaction has been authorized by the database. The licensee shall place the transaction authorization number on the deferred presentment agreement and provide a copy of the agreement to the customer.
 - e. In the event that the database is not accessible, the licensee shall follow procedures outlined by the database vendor.
2. It is a violation of this chapter for a licensee to knowingly enter transactional information into the database that is incomplete or inaccurate.

History: Effective April 1, 2013.

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-12

13-06-01-16.3. Cancellation, modification, or closing of transactions on database.

- 1. If a deferred presentment agreement is canceled, the licensee shall not assess either the transaction fee or the verification fee to the customer. The licensee shall immediately close the transaction on the database.
- 2. If a licensee becomes aware of a change of information relating to an open transaction, the licensee shall immediately update the transaction on the database to ensure that all identifying information regarding both the customer and the transaction are accurate, including any comments on the transaction which the licensee deems relevant.
- 3. Licensee shall be responsible for immediately closing all transactions on the database. The licensee shall input the date a transaction closes, as well as the payment method.
- 4. The department shall have the authority to make changes to the database transactions as deemed necessary. This includes the ability

to instruct the database vendor to close any transactions associated with a licensee whose license to conduct business in North Dakota remains in a nonactive status for thirty days or more.

History: Effective April 1, 2013.

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-12

13-06-01-16.4. Database transaction fees. A licensee shall be responsible to make payment of all database transaction fees charged for registering a transaction on the database administered or authorized by the commissioner. Database transaction fees will be charged on a per transaction basis. A licensee may charge the database transaction fee to each customer securing the loan for which the database transaction fee is based.

History: Effective April 1, 2013.

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-12

CHAPTER 13-07-01

13-07-01-01. Definitions. For purposes of this chapter, "past due or doubtful of collection" means cash due from an authorized delegate that is not remitted on or before the tenth business day after the date the authorized delegate is required to remit the money under the written agreement between the licenseholder and the authorized delegate.

History: Effective April 1, 2013.

General Authority: NDCC 13-09-14

Law Implemented: NDCC 13-09-02, 13-09-15

CHAPTER 13-08-01

13-08-01-01. Fees. At the time of making an application for licensure under North Dakota Century Code chapter 13-10, the applicant shall include payment in the sum of twenty-five dollars, as a fee for investigating the application, and the sum of fifty dollars for the license fee. Additionally, each licensee shall pay a fifty dollar annual fee upon each renewal. When a mortgage loan originator has been delinquent in renewing its license, the department may charge an additional fee of fifty dollars for the reinstatement of such license. Upon a change of employment to a different money broker, a mortgage loan originator shall pay a fee of twenty-five dollars. All fees shall be submitted through the nationwide mortgage licensing system.

History: Effective April 1, 2013.

General Authority: NDCC 13-10-03, 13-10-10

Law Implemented: NDCC 13-10-10

TITLE 24
STATE ELECTRICAL BOARD

APRIL 2013

CHAPTER 24-02-01

24-02-01-02. General statement of policy and interpretative rules.

There are three categories of licensed electricians recognized by the electrical board.

1. Licensed electricians and the qualifications required for each to apply for examination:
 - a. A master electrician shall have at least two thousand hours of experience working as a licensed journeyman electrician under the supervision of a contracting master electrician or master of record.

There are three categories of master electricians, which are defined as follows:

- (1) A contracting master is a person responsible to adhere to all rules and laws of the North Dakota wiring standards and has shown proof of liability insurance and contributed to the undertaking fund.
- (2) A master of record is a person responsible to adhere to all rules and laws of the North Dakota wiring standards for the partnership, company, corporation, limited liability company, or association and has shown proof of liability insurance that the master of record is covered by the organization and has contributed to the undertaking fund. The master of record is not allowed to work on other property other than property owned or leased by the organization.
- (3) A noncontracting master is a person responsible to adhere to all rules and laws of the North Dakota wiring standards and has the same responsibility as a journeyman electrician. Electrical work shall be done under the supervision of a contracting master or master of record.

- b. A journeyman electrician shall have completed eight thousand hours experience, which experience may not be obtained in less than three years, registered as an apprentice electrician (of which up to three thousand hours may apply under the qualifications of a class B electrician) under the supervision of a contracting master or master of record licensed electrician in an area where electrical construction work is done in the jurisdiction regulating similar licensing and inspection rules of the state of North Dakota, and successfully completed apprentice electrician training as described in subdivision a or b of subsection 2. Two thousand hours credit may be granted for a graduate of a two-year or more electrical school accepted by the state electrical board. Practical experience shall consist of a minimum of four thousand hours and a maximum of eight thousand hours credit may be granted for wiring for and installing electrical wiring, apparatus, and equipment. Practical electrical experience gained through a contracting master electrician shall also consist of an apprentice completing an approved bureau of apprenticeship training program.

Credit allowed in other areas may include any combination of the following:

- (1) A maximum of one thousand hours credit for repairing electrical wiring, apparatus, and equipment and light, heat, and power;
- (2) A maximum of one thousand hours credit for wiring fire alarm technology circuits or systems;
- (3) A maximum of two thousand hours credit for wiring process control circuits or systems; and
- (4) A maximum of two thousand hours credit of electrical construction experience gained in the armed forces of the United States which the board has determined is equivalent to work performed under the supervision of a North Dakota licensed electrical contractor.

The person shall have the necessary qualifications, training, and technical knowledge to wire, install, and repair electrical apparatus and equipment in accordance with the standard rules and regulations of the National Electrical Code.

- c. A class B electrician shall have completed three thousand hours experience in farmstead or residential wiring, in one-family or two-family dwellings, under the supervision of a master or class B electrician.

Commercial wiring experience will not be credited for experience toward a class B license. One thousand hours credit will be granted for a graduate of a two-year electrical school approved by the state electrical board.

- d. Upon receiving an application for an electrician's license from an applicant, the state electrical board shall forward an employment verification record to the appropriate parties listed in the application. Upon receiving verification of electrical construction experience as outlined under this section and upon final approval of the application by the state electrical board, the applicant shall be sent an invitation to take the examination. The invitation shall outline the available testing dates for three months. Upon receiving the invitation, the applicant shall contact the state electrical board and inform the board as to the date chosen to take the examination.
 - e. The state electrical board issues an identification card to currently licensed and registered electricians. This identification card, along with a government-issued picture identification card, shall be in the possession of the electrician when doing electrical work. If the identification card is misplaced or destroyed, a replacement charge to cover board costs shall be imposed.
2. Apprentice electricians. There are two categories of apprentice electrician training.
- a. Apprentice electricians who have successfully completed the United States department of labor training program recognized by the office of apprenticeship.
 - b. Apprentice electricians who have successfully completed at least two years of electrical school approved by the state electrical board or five hundred seventy-six hours of training classes recognized by the United States department of labor office of apprenticeship. An unlicensed electrician who has prior experience outside of the state of North Dakota may take a placement examination equal to the verification of practical experience obtained in order to apply credit toward the verification of hours. If the electrician fails the placement examination, the electrician is ineligible to retake the examination. An appeal would need to be submitted in writing to the state electrical board.
 - c. An apprentice electrician who has not successfully completed training as stated in subdivision a or b is required to be registered with the state electrical board, but is not eligible to take the journeyman or class B license examination. If the person receives a license from another state based on the verification that the majority of practical experience was obtained in the state of North

Dakota the person will not be eligible for examination for licensure or a reciprocal license.

A licensed electrician shall supervise not more than three apprentices. Any person over sixteen years of age may work as an apprentice under a licensed master or class B electrician, but the master or class B electrician shall not allow an apprentice to work on any installation without direct constant supervision by a North Dakota licensed electrician working with the apprentice at the worksite.

Electrical contractors shall maintain records of all employees who are or will be performing electrical work for that electrical contractor and shall permit the electrical board to examine and copy all such records as required by this section.

When an apprentice electrician is found to be doing electrical work not under the direct supervision of a licensed electrician, an investigative fee may be charged to cover the costs incurred by the board. Costs are to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.

Any master or class B electrician who fails or refuses to comply with this section or who fails or refuses to comply or demonstrate compliance with this section at the request of the board or its representative shall subject that person's license to nonrenewal, suspension, or revocation by the board.

3. Master and class B electricians. A master or class B electrician may exercise that person's privileges as a licensed master or class B electrician for no more than one shop or business, and shall comply with provisions as required for contracting with the secretary of state's office as stated in North Dakota Century Code chapter 43-07. A master or class B electrician must be engaged full time in the operation of the shop or business. A master or class B electrician shall notify the state electrical board office immediately upon changing from contracting status to noncontracting status for the shop or business they represent.
4. Maintenance personnel regularly employed by the owner may maintain or make minor repairs to existing electrical wiring devices and appliances, but are precluded from extending or changing the characteristics of existing circuits, feeders, or other electrical apparatus.
5. Purpose and scope. The purpose of these standards is the practical safeguarding of persons and of buildings and building contents from electrical hazards arising from the use or control of electricity for light, heat, power, and control thereof and of the fire detection system. It covers the electrical conductors and equipment installed within or on public and private buildings and other premises, including yards,

carnival and parking lots, railroad right of way and, also the conductors that supply streetlighting, with the associated equipment necessary to its safe operation.

These standards, based on the National Electrical Code, are the result of years of experience and research to meet the demand for uniform standards to govern electrical wiring in North Dakota, and provide basic rules for intelligent and uniform installation and inspection.

All requirements contained herein shall be given careful consideration to ensure greatest permanence, convenience, and safety. These standards do not constitute a design specification for any particular installation, nor an instruction manual for untrained persons. Skill and experience are necessary factors for a safe and adequate wiring installation. In cases where these requirements differ or are in conflict with the requirements of the NFPA 70 2011 edition National Electrical Code and NFPA 101 2009 edition Life Safety Code, and applicable articles in currently adopted state building code pertaining to fire detection, fire alarms, fire communications, and smoke detectors, the more restrictive requirements shall be the minimum.

6. Administrative powers and duties. The executive director of the state electrical board, under the direction of the board, shall administer laws, rules, and wiring standards of this state, the electrical requirements of the NFPA 70 2011 edition National Electrical Code and NFPA 101 2009 edition Life Safety Code, and applicable articles in currently adopted state building code pertaining to fire detection, fire alarms, fire communications, and smoke detectors. Where it states in the 2011 edition of the National Electrical Code, "This requirement becomes effective January 1, 2014", the effective date shall be April 1, 2014. In all cases when any action is taken by the executive director to enforce the provisions of any sections contained in these electrical regulations, the NFPA 70 2011 edition National Electrical Code and NFPA 101 2009 edition Life Safety Code, such acts shall be done in the name of and on behalf of the state.

The electrical regulations of these standards, the NFPA 70 2011 edition National Electrical Code and NFPA 101 2009 edition Life Safety Code, may be modified or waived by special permission in particular cases when such modification or waiver is specifically permitted or in particular cases when an advancement in the technology of electricity makes such modification or waiver advisable in the best interest of the people of North Dakota. Such "special permission" shall, in all cases, be obtained from the executive director in writing prior to the commencement of the work.

Whenever the board is authorized or mandated by law to inspect an electrical installation, the inspector has authority to enter upon land for the purpose of conducting the inspection. Except in emergency circumstances, the inspector shall request permission from the property owner or agent prior to entering a

dwelling, other building, or other place so enclosed as manifestly to exclude intruders. If the landowner refuses to give permission, the board may request the district court of the district containing the property for an order authorizing the inspector to enter the property to conduct the inspection. Emergency circumstances include situations presenting imminent danger to health, safety, or property.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008; September 1, 2011; April 1, 2013.

General Authority: NDCC 43-09-05

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

TITLE 43
INDUSTRIAL COMMISSION

APRIL 2013

CHAPTER 43-05-01
GEOLOGIC STORAGE OF CARBON DIOXIDE

Section	
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<u>43-05-01-07.1</u>	<u>Permitting</u>
<u>43-05-01-07.2</u>	<u>Draft Permits and Fact Sheets</u>
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43-05-01-11	<u>Injection Well Operational Construction and Completion Standards</u>
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<u>43-05-01-11.2</u>	<u>Logging, Sampling, and Testing Prior to Injection Well Operation</u>
<u>43-05-01-11.3</u>	<u>Injection Well Operating Requirements</u>

<u>43-05-01-11.4</u>	<u>Testing and Monitoring Requirements</u>
<u>43-05-01-11.5</u>	<u>Injection Well Plugging</u>
<u>43-05-01-11.6</u>	<u>Injection Depth Waiver Requirements</u>
43-05-01-12	Amendment to Carbon Dioxide Storage Facility Well Permits <u>Modification, Revocation, and Reissuance or Termination of Permits</u>
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43-05-01-19	<u>Postinjection Site Care and Facility Closure</u>
43-05-01-20	Determining Storage Amounts

43-05-01-01. Definitions. ~~Terms~~ The terms used in throughout this chapter have the same meaning as in chapter 43-02-03 and North Dakota Century Code chapter 38-08. ~~Further, in this chapter except:~~

1. ~~"Carbon dioxide" means carbon dioxide produced by anthropogenic sources which is of such purity and quality that it will not compromise the safety of geologic storage and will not compromise those properties of a storage reservoir which allow the reservoir to effectively enclose and contain a stored gas.~~ "Abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.
2. "Activity" means any activity related to the geologic storage of carbon dioxide subject to regulation under this chapter and North Dakota Century Code chapter 38-22.
3. "Aquifer" means a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well, spring, or other point of discharge.
4. "Area of review" means the region surrounding the geologic sequestration project where underground sources of drinking water may be endangered by the injection activity.
5. "Bond rating" means a rating assigned to any long-term senior secured indebtedness issued by or on behalf of the storage operator, including any indebtedness issued by any governmental authority with respect to which the storage operator is obligor.

6. "Carbon dioxide plume" means the extent underground, in three dimensions, of an injected carbon dioxide stream.
7. "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source (e.g., a coal-burning power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This does not apply to any carbon dioxide stream that meets the definition of a hazardous waste.
8. "Casing" means a pipe or tubing of varying diameter and weight, which is installed into a well to maintain the structural integrity of that well.
9. "Cementing" means the operation whereby a cement slurry is pumped into a drilled hole and forced behind the casing.
- ~~2-~~ 10. "Closure period" means that period from permanent cessation of carbon dioxide injection until the commission issues a certificate of project completion.
- ~~3-~~ "Commission" means industrial commission.
11. "Confining zone" means a geologic formation, group of formations, or part of a formation stratigraphically overlying the injection zone that acts as a barrier to fluid movement. For injection wells operating under an injection depth waiver, confining zone means a geologic formation, group of formations, or part of a formation stratigraphically overlying and underlying the injection zone.
12. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
13. "Corrective action" means the use of commission-approved methods to ensure that wells within the area of review do not serve as conduits for the movement of fluids into underground sources of drinking water.
14. "Draft permit" means a document prepared under section 43-05-01-07.2 indicating the commission's tentative decision to issue a storage facility permit or modify, revoke and reissue, or terminate an existing storage facility permit.
15. "Exempted aquifer" means an "aquifer" or its portion that meets the criteria in the definition of "underground sources of drinking water" but which has been exempted according to the procedures in section 43-05-01-02.4.
16. "Facility area" means the areal extent of the storage reservoir.

17. "Fault" means a surface or zone of rock fracture along which there has been displacement.
- 4- 18. "Flow lines" means pipelines transporting carbon dioxide from the carbon dioxide ~~facility~~ injection facilities to the wellhead.
19. "Fluid" means any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.
20. "Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.
21. "Formation fluid" means fluid present in a formation under natural conditions as opposed to introduced fluids.
- 5- 22. "Formation fracture pressure" means the pressure, measured in pounds per square inch, which, if applied to a subsurface formation, will cause that formation to fracture.
- 6- ~~"Freshwater" means an underground source of drinking water unless otherwise defined by the commission.~~
- 7- ~~"Geologic storage" means the permanent or short-term underground storage of carbon dioxide in a storage reservoir.~~
23. "Geologic sequestration" means the geologic storage of a gaseous, liquid, or supercritical carbon dioxide stream in a storage reservoir. This term does not apply to carbon dioxide capture or transport.
24. "Geologic sequestration project" means an injection well or wells used to emplace a carbon dioxide stream beneath the lowermost formation containing underground sources of drinking water; or, wells used for geologic sequestration that have been granted a waiver of the injection depth requirements; or, wells used for geologic sequestration that have received an expansion to the areal extent of an existing enhanced oil or gas recovery aquifer exemption. It includes the subsurface three-dimensional extent of the carbon dioxide plume, as well as the associated pressure front.
25. "Ground water" means water occurring beneath the surface of the ground that fills available openings in rock or soil materials such that they may be considered saturated.
- 8- 26. "Injection well" means a nonexperimental well used to inject carbon dioxide into or withdraw carbon dioxide from a reservoir.
27. "Injection zone" means a geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and

permeability to receive carbon dioxide through a well or wells associated with a geologic sequestration project.

28. "Mechanical integrity" means the absence of significant leakage within an injection well's tubing, casing, or packer (internal mechanical integrity), or outside of the casing (external mechanical integrity).
- 9- 29. "Minerals" means coal, oil, and natural gas.
30. "Model" means a representation or simulation of a phenomenon or process that is difficult to observe directly or that occurs over long timeframes. Models that support geologic sequestration can predict the flow of carbon dioxide within the subsurface, accounting for the properties and fluid content of the subsurface formations and the effects of injection parameters.
- 40- 31. "Operational period" means the period during which injection occurs.
- 41- ~~"Permit" means a permit issued by the commission allowing a person to operate a storage facility.~~
32. "Packer" means a device lowered into a well, which can be expanded or compressed to produce a fluid-tight seal.
33. "Person" means an individual, association, partnership, corporation, municipality, state, federal, or tribal agency, or an agency or employee thereof.
34. "Plug" or "plugging" means that act or process of sealing the flow of fluid into or out of a formation through a borehole or "well" penetrating that formation.
- 42- 35. "Postclosure period" means that period after the commission has issued a certificate of project completion.
- 13- ~~"Reservoir" means a subsurface sedimentary stratum, formation, aquifer, cavity, or void, whether natural or artificially created, including oil and gas reservoirs, saline formations, and coal seams suitable for or capable of being made suitable for injecting and storing carbon dioxide.~~
- 14- ~~"Storage facility" means the reservoir, underground equipment, and surface facilities and equipment used or proposed to be used in a geologic storage operation. It does not include pipelines used to transport carbon dioxide to the storage facility.~~
- 15- ~~"Storage operator" means a person holding or applying for a permit.~~
- 16- ~~"Storage reservoir" means a reservoir proposed, authorized, or used for storing carbon dioxide.~~

36. "Postinjection site care" means appropriate monitoring and other actions, including corrective action, needed following cessation of injection to ensure that underground sources of drinking water are not endangered. Postinjection site care may occur in the closure or postclosure periods.
37. "Pressure" means the total load or force per unit area acting on a surface.
38. "Pressure front" means the zone of elevated pressure and displaced fluids created by the injection of carbon dioxide into the subsurface. The pressure front of a carbon dioxide plume refers to a zone where there is a pressure differential sufficient to cause the movement of injected fluids or formation fluids into underground sources of drinking water.
39. "Project completion" means the point in time, as determined by the commission at which the certificate of project completion is issued and the storage operator is released from all regulatory requirements associated with the storage facility.
40. "Stratum" (strata plural) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.
- ~~47.~~ 41. "Subsurface observation well" means a well used to observe subsurface phenomena, including the presence of carbon dioxide, pressure fluctuations, fluid levels and flow, temperature, and in situ water chemistry.
42. "Surface casing" means the first string of well casing to be installed in the well.
43. "Transmissive fault or fracture" means a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.
44. "Trapping" means the physical and geochemical processes by which injected carbon dioxide is sequestered in the subsurface. Physical trapping occurs when buoyant carbon dioxide rises in the formation until it reaches impermeable strata that inhibits further upward and lateral migration or is immobilized in pore spaces due to capillary forces. Geochemical trapping occurs when chemical reactions between the injected carbon dioxide and natural occurring minerals in the formation lead to the precipitation of solid carbonate minerals or dissolution in formation fluids.
- ~~48.~~ 45. "Underground source of drinking water" means an aquifer or any portion of an aquifer that supplies drinking water for human consumption, or in which the ground water contains fewer than ten thousand milligrams per

liter total dissolved solids and is not an exempted aquifer as determined by the commission under section 43-02-05-03.

46. "Well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension; or an improved sinkhole; or a subsurface fluid distribution system.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-02. Scope of chapter. This chapter governs the geologic storage of carbon dioxide. This chapter does not apply to applications filed with the commission proposing to use carbon dioxide for an enhanced oil or gas recovery project, rather such applications will be processed under chapter 43-02-05.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-02.1. Application of rules for geologic storage of carbon dioxide. In addition to the provisions in this chapter, injection wells utilized for geologic storage are subject to the provisions of chapters 43-02-03 and 43-02-05 when applicable.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-02.2. Injection into underground source of drinking water prohibited. Underground injection of carbon dioxide for geologic storage that causes or allows movement of fluid into an underground source of drinking water is prohibited, unless the underground source of drinking water is an exempted aquifer under section 43-02-05-03.

No storage operator shall construct, operate, maintain, convert, plug, abandon, or conduct any injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may endanger underground sources of drinking water or may adversely affect the health of persons. The applicant must show that the objectives of this section are fulfilled.

Notwithstanding any other provision of this section, the commission may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or underground source of drinking

water may present an imminent and substantial endangerment to the health of persons.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-02.3. Transitioning from enhanced oil or gas recovery to geologic sequestration. A storage operator injecting carbon dioxide for the primary purpose of geologic sequestration into an oil and gas reservoir shall apply for and obtain storage facility and injection well permits when there is an increased risk to underground sources of drinking water compared to enhanced oil or gas recovery operations. In determining if there is an increased risk to underground sources of drinking water, the commission shall consider the following factors:

1. Increase in reservoir pressure within the injection zone;
2. Increase in carbon dioxide injection rates;
3. Decrease in reservoir production rates;
4. Distance between the injection zone and underground sources of drinking water;
5. Suitability of the enhanced oil or gas recovery area of review delineation;
6. Quality of abandoned well plugs within the area of review;
7. The storage operator's plan for recovery of carbon dioxide at the cessation of injection;
8. The source and properties of injected carbon dioxide; and
9. Any additional site-specific factors as determined by the commission.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-02.4. Exempted aquifers and expansions of areal extent of existing aquifer exemptions.

1. The commission may identify by narrative description, illustrations, maps, or other means and shall implement these rules to protect as underground sources of drinking water, all aquifers and parts of aquifers that meet the definition of "underground source of drinking water". Even if an aquifer has not been specifically identified by the commission, it is an underground source of drinking water if it meets the definition of "underground source of drinking water". Other

than environmental protection agency-approved aquifer exemption expansions, new aquifer exemptions shall not be issued for injection wells.

2. The commission shall identify, by narrative description, illustrations, maps, or other means, and describe in geographic and geometric terms, such as vertical and lateral limits and gradient, which are clear and definite, all aquifers or parts of aquifers that the commission proposes to designate as exempted aquifers using the criteria in section 43-02-05-03. No designation of an exempted aquifer submitted as part of the underground injection control program is final until approved by the United States environmental protection agency administrator as part of the underground injection control program.
3. A storage operator of enhanced oil or gas recovery wells may apply to the commission for approval to expand the areal extent of an aquifer exemption already in place for an enhanced oil or gas recovery well for the exclusive purpose of carbon dioxide injection for geologic sequestration. Such applications are considered a revision to the applicable federal underground injection control program or a substantial program revision to an approved state underground injection control program and are not final until approved by the United States environmental protection agency.
 - a. A storage operator's application must define by narrative description, illustrations, maps, or other means and describe in geographic or geometric terms, such as vertical or lateral limits and gradient that are clear and definite, all aquifers or parts thereof that are requested to be designated as exempted under section 43-02-05-03.
 - b. In evaluating an application, the commission shall determine that it meets the criteria for exemptions in section 43-02-05-03. In making the determination, the commission shall consider:
 - (1) Current and potential future use of the underground sources of drinking water to be exempted as drinking water resources;
 - (2) The predicted extent of the injected carbon dioxide plume, and any mobilized fluids that may result in degradation of water quality, over the lifetime of the geologic sequestration project, as informed by computational modeling performed pursuant to subdivision a of subsection 2 of section 43-05-01-05.1, in order to ensure that the proposed injection operation will not at any time endanger underground sources of drinking water, including nonexempted portions of the injection formation;

- (3) Whether the areal extent of the expanded aquifer exemption is sufficient to account for any possible revisions to the computational model during reevaluation of the area of review; and
- (4) Information submitted to support a waiver request made by the applicant under section 43-05-01-11.6, if appropriate.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-02.5. Prohibition of unauthorized injection. Any underground injection of carbon dioxide for the purpose of geologic storage, except into a well authorized by permit issued under this chapter, is prohibited. The construction of any well required to have a permit is prohibited until the permit authorizing construction of the well has been issued.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-02.6. Existing well conversion. Storage operators seeking to convert an existing well to an injection well for the purpose of geologic storage of carbon dioxide must demonstrate to the commission that the well is constructed in a manner that will ensure the protection of underground sources of drinking water.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-03. Books and records to be kept to substantiate reports. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, operating, or servicing storage facilities shall make and keep appropriate books and records ~~for a period of not less than six years~~ until project completion, covering their operations in North Dakota from which they may be able to make and substantiate the reports required by this chapter.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-05. Storage facility permit.

1. An application for a permit must include the following:
 - a. A site map showing the boundaries of the storage reservoir and the location of all proposed wells, proposed cathodic protection

boreholes, and surface facilities within the carbon dioxide storage facility;

b. A technical evaluation of the proposed storage facility, including the following.

(1) The name, description, and average depth of the storage reservoirs;

(2) A geologic and hydrogeologic evaluation of the facility area, including an evaluation of all existing information on all geologic strata overlying the storage reservoir, including the immediate caprock containment characteristics and all subsurface zones to be used for monitoring. The evaluation must include any available geophysical data and assessments of any regional tectonic activity, local seismicity and regional or local fault zones, and a comprehensive description of local and regional structural or stratigraphic features. The evaluation must describe the storage reservoir's mechanisms of geologic confinement, including rock properties, regional pressure gradients, structural features, and adsorption characteristics with regard to the ability of that confinement to prevent migration of carbon dioxide beyond the proposed storage reservoir. The evaluation must also identify any productive existing or potential mineral zones occurring within the facility area and any ~~freshwater~~ underground sources of drinking water in the facility area and within one mile [1.61 kilometers] of its outside boundary. The evaluation must include exhibits and plan view maps showing the following:

(a) All wells, including water, oil, and natural gas exploration and development wells, and other manmade subsurface structures and activities, including coal mines, within the facility area and within one mile [1.61 kilometers] of its outside boundary;

(b) All manmade surface structures that are intended for temporary or permanent human occupancy within the facility area and within one mile [1.61 kilometers] of its outside boundary;

(c) Any regional or local faulting;

(d) An isopach map of the storage reservoirs;

(e) An isopach map of the primary and any secondary containment barrier for the storage reservoir;

- (f) A structure map of the top and base of the storage reservoirs;
- (g) Identification of all structural spill points or stratigraphic discontinuities controlling the isolation of stored carbon dioxide and associated fluids within the storage reservoir;
- (h) Evaluation of the ~~potential displacement of in situ water pressure front~~ and the potential impact on ~~ground water resources~~ underground sources of drinking water, if any; and
- (i) Structural and stratigraphic cross sections that describe the geologic conditions at the storage reservoir ~~or reservoirs~~;
- (j) The location, orientation, and properties of known or suspected faults and fractures that may transect the confining zone in the area of review, and a determination that they would not interfere with containment;
- (k) Data on the depth, areal extent, thickness, mineralogy, porosity, permeability, and capillary pressure of the injection and confining zone, including facies changes based on field data, which may include geologic cores, outcrop data, seismic surveys, well logs, and names and lithologic descriptions;
- (l) Geomechanical information on fractures, stress, ductility, rock strength, and in situ fluid pressures within the confining zone. The confining zone must be free of transmissive faults or fractures and of sufficient areal extent and integrity to contain the injected carbon dioxide stream;
- (m) Information on the seismic history, including the presence and depth of seismic sources and a determination that the seismicity would not interfere with containment;
- (n) Geologic and topographic maps and cross sections illustrating regional geology, hydrogeology, and the geologic structure of the facility area; and
- (o) Identify and characterize additional strata overlying the storage reservoir that will prevent vertical fluid movement, are free of transmissive faults or

fractures, allow for pressure dissipation, and provide additional opportunities for monitoring, mitigation, and remediation.

- (3) A review of the data of public record, conducted by a geologist or engineer, for all wells within the facility area, which penetrate the storage reservoir or primary or secondary seals overlying the reservoir, and all wells within the facility area and within one mile [1.61 kilometers], or any other distances deemed necessary by the commission, of the facility area's boundary. ~~This review must determine if all abandoned wells have been plugged in a manner that prevents the carbon dioxide or associated fluids from escaping from the storage reservoir. The review required under this paragraph shall be conducted by a geologist or engineer;~~ The review must include the following:
- (a) A determination that all abandoned wells have been plugged and all operating wells have been constructed in a manner that prevents the carbon dioxide or associated fluids from escaping from the storage reservoir;
 - (b) A description of each well's type, construction, date drilled, location, depth, record of plugging, and completion;
 - (c) Maps and stratigraphic cross sections indicating the general vertical and lateral limits of all underground sources of drinking water, water wells, and springs within the area of review; their positions relative to the injection zone; and the direction of water movement, where known;
 - (d) Maps and cross sections of the area of review;
 - (e) A map of the area of review showing the number or name and location of all injection wells, producing wells, abandoned wells, plugged wells or dry holes, deep stratigraphic boreholes, state-approved or United States environmental protection agency-approved subsurface cleanup sites, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells, other pertinent surface features, including structures intended for human occupancy, state, county, or Indian country boundary lines, and roads;

- (f) A list of contracts, submitted to the commission, when the area of review extends across state jurisdiction boundary lines;
 - (g) Baseline geochemical data on subsurface formations, including all underground sources of drinking water in the area of review; and
 - (h) Any additional information the commission may require.
- (4) The proposed calculated average and maximum daily injection rates, daily volume, and areal extent for the storage reservoir the total anticipated volume of the carbon dioxide stream using a method acceptable to and filed with the commission; ~~and~~
 - (5) The proposed average and maximum bottom hole injection pressure to be utilized at the reservoir. The maximum allowed injection pressure, measured in pounds per square inch gauge, shall be approved by the commission and specified in the permit. In approving a maximum injection pressure limit, the commission shall consider the results of well tests and other studies that assess the risks of tensile failure and shear failure. The commission shall approve limits that, with a reasonable degree of certainty, will avoid initiating a new fracture or propagating an existing fracture in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water;
 - (6) The proposed preoperational formation testing program to obtain an analysis of the chemical and physical characteristics of the injection zone and confining zone pursuant to section 43-05-01-11.2;
 - (7) The proposed stimulation program, a description of stimulation fluids to be used, and a determination that stimulation will not interfere with containment; and
 - (8) The proposed procedure to outline steps necessary to conduct injection operations.
- C. The extent of the pore space that will be occupied by carbon dioxide as determined by utilizing all appropriate geologic and reservoir engineering information and reservoir analysis, which ~~may~~ must include various computational models ~~if appropriate~~ for reservoir characterization, and the projected response of the carbon dioxide plume and storage capacity of the geologic storage unit reservoir. The computational model must be based on detailed geologic data

collected to characterize the injection zones, confining zones, and any additional zones;

- d. ~~A detailed description of the storage facility's public safety and~~ An emergency and remedial response plan. ~~The plan must detail the safety procedures concerning the facility and residential, commercial, and public land use within one mile [1.61 kilometers], or any other distance set by the commission, of the outside boundary of the area. The public safety and emergency response procedures must include contingency plans for carbon dioxide leakage from any well, flow lines, or other facility and identify specific contractors and equipment vendors capable of providing necessary services and equipment to respond to such leaks or loss of containment from the storage reservoir. These emergency response procedures must be reviewed and updated annually pursuant to section 43-05-01-13;~~
- e. A detailed worker safety plan that addresses carbon dioxide safety training and safe working procedures at the storage facility pursuant to section 43-05-01-13;
- f. A corrosion monitoring and prevention plan for all wells and surface facilities pursuant to section 43-05-01-15;
- g. A leak detection and monitoring plan for all wells and surface facilities pursuant to section 43-05-01-14. The plan must:
 - (1) Identify the potential for release to the atmosphere;
 - (2) Identify potential degradation of ground water resources with particular emphasis on underground sources of drinking water; and
 - (3) Identify potential migration of carbon dioxide into any mineral zone in the facility area;
- h. A leak detection and monitoring plan ~~utilizing subsurface observation wells~~ to monitor any movement of the carbon dioxide outside of the storage reservoir. This may include the collection of baseline information of carbon dioxide background concentrations in ground water, surface soils, and chemical composition of in situ waters within the facility area and the storage reservoir and within one mile [1.61 kilometers] of the facility area's outside boundary. Provisions in the plan will be dictated by the site characteristics as documented by materials submitted in support of the permit application but must:
 - (1) Identify the potential for release to the atmosphere;

- (2) Identify potential degradation of ground water resources with particular emphasis on underground sources of drinking water; and
 - (3) Identify potential migration of carbon dioxide into any mineral zone in the facility area;
- i. The proposed well casing and cementing program detailing compliance with section 43-05-01-09;
 - j. ~~A performance bond in an amount and under terms set by the commission to provide it with funds sufficient to satisfy any regulatory obligation that the storage operator fails to fulfill. If the commission uses a part of the bond, the storage operator shall immediately replenish the bond or secure a new bond to ensure that the full bond amount set by the commission is maintained~~ An area of review and corrective action plan that meets the requirements pursuant to section 43-05-01-05.1;
 - k. ~~Any other information that the commission requires; and~~ The storage operator shall comply with the financial responsibility requirements pursuant to section 43-05-01-09.1;
 - l. ~~A closure plan.~~ A testing and monitoring plan pursuant to section 43-05-01-11.4;
 - m. A plugging plan that meets requirements pursuant to section 43-05-01-11.5;
 - n. A postinjection site care and facility closure plan pursuant to section 43-05-01-19; and
 - o. Any other information that the commission requires.
2. Any person filing a permit application or an application to amend an existing permit shall pay a processing fee. The fee will be based on actual processing costs, including computer data processing costs, incurred by the commission.
- a. A record of all application processing costs incurred must be maintained by the commission.
 - b. Promptly after receiving an application, the commission shall prepare and submit to the applicant an estimate of the processing fee and a payment billing schedule.
 - c. After the commission's work on the application has concluded, a final statement will be sent to the applicant. The full processing fee

must be paid before the commission issues its final decision on an application.

- d. The applicant must pay the processing fee regardless of whether a permit is issued or denied, or the application withdrawn.
3. The commission has one year from the date an application is deemed complete to issue a final decision regarding the application.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-05.1. Area of review and corrective action.

1. The storage operator shall prepare, maintain, and comply with a plan to delineate the area of review for a proposed geologic sequestration project, periodically reevaluate the delineation, and perform corrective action that meets the requirements of this section and is acceptable to the commission. The requirement to maintain and implement a commission-approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. As a part of the storage facility permit application, the storage operator shall submit an area of review and corrective action plan that includes the following:
 - a. The method for delineating the area of review, including the model to be used, assumptions that will be made, and the site characterization data on which the model will be based;
 - b. A description of:
 - (1) The reevaluation date, not to exceed five years, at which time the storage operator shall reevaluate the area of review;
 - (2) The monitoring and operational conditions that would warrant a reevaluation of the area of review prior to the next scheduled reevaluation date;
 - (3) How monitoring and operational data (e.g., injection rate and pressure) will be used to inform an area of review reevaluation; and
 - (4) How corrective action will be conducted to meet the requirements of this section, including what corrective action will be performed prior to injection and what, if any, portions of the area of review will have corrective action addressed on a phased basis and how the phasing will be determined; how corrective action will be adjusted if there

are changes in the area of review; and how site access will be guaranteed for future corrective action.

2. The storage operator shall perform the following actions to delineate the area of review and identify all wells that require corrective action:
 - a. Predict, using existing site characterization, monitoring and operational data, and computational modeling, the projected lateral and vertical migration of the carbon dioxide plume and its associated pressure front in the subsurface from the commencement of injection activities until the plume movement ceases, or until the end of a fixed time period as determined by the commission. The model must:
 - (1) Be based on detailed geologic data collected to characterize the injection zone, confining zone, and any additional zones; and anticipated operating data, including injection pressures, rates, and total volumes over the proposed life of the geologic sequestration project;
 - (2) Take into account any geologic heterogeneities, other discontinuities, data quality, and their possible impact on model predictions; and
 - (3) Consider potential migration through faults, fractures, and artificial penetrations.
 - b. Using methods approved by the commission, identify all penetrations, including active and abandoned wells and underground mines, in the area of review that may penetrate the confining zone. Provide a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the commission may require; and
 - c. Determine which abandoned wells have been plugged or operating wells have been constructed in the area of review in a manner that prevents the movement of the injected carbon dioxide or other fluids that may endanger underground sources of drinking water, including use of materials compatible with the carbon dioxide stream.
3. The storage operator shall perform corrective action on all wells in the area of review that are determined to need corrective action, using methods designed to prevent the movement of fluid into or between underground sources of drinking water, including use of materials compatible with the carbon dioxide stream, where appropriate.

4. At the reevaluation date, not to exceed five years, as specified in the area of review and corrective action plan, or when monitoring and operational conditions warrant, the storage operator shall:
 - a. Reevaluate the area of review in the same manner specified in subdivision a of subsection 2:
 - b. Identify all wells in the reevaluated area of review that require corrective action in the same manner specified in subsection 2:
 - c. Perform corrective action on wells requiring corrective action in the reevaluated area of review in the same manner specified in subsection 3; and
 - d. Submit an amended area of review and corrective action plan or demonstrate to the commission through monitoring data and modeling results that no amendment to the plan is needed. Any amendments to the plan are subject to the commission's approval, must be incorporated into the permit, and are subject to the permit modification requirements.
5. The emergency and remedial response plan and the demonstration of financial responsibility must account for the area of review, regardless of whether or not corrective action in the area of review is phased.
6. All modeling inputs and data used to support area of review delineations and reevaluations must be retained until project completion. Upon project completion, the storage operator shall deliver the records to the commission.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-06. Storage facility permit transfer.

1. **Notification.** The storage operator and proposed transferee shall notify the commission in writing of any proposed permit transfer. The notice must contain the following:
 - a. The name and address of the person to whom the permit is to be transferred.
 - b. The name of the permit subject to transfer and location of the storage facility and a description of the land ~~upon which the storage facility is situated~~ within the facility area.
 - c. The date that the storage operator desires the proposed transfer to occur.

d. ~~Performance bonds~~ A demonstration of financial assurance as required by section ~~43-05-01-05~~ 43-05-01-09.1.

2. **Transfers by modification.** A storage facility permit may be transferred by the storage operator to a new storage operator only if the storage facility permit is modified, or revoked and reissued, or a minor modification made, to identify the new storage operator and incorporate such other requirements as may be necessary under state and federal laws.

~~2.~~ 3. **Commission review.** The commission shall review the proposed transfer to ensure that the purposes of North Dakota Century Code chapter 38-22 are not compromised but are promoted. For good cause, the commission may deny a transfer request, delay acting on it, and place conditions on its approval.

~~3.~~ 4. **Commission approval required.** A permit transfer can occur only upon the commission's written order. The transferor of a permit shall receive notice from the commission that the approved new storage operator has demonstrated financial responsibility for the storage facility.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-07. Amending storage facility permit. Repealed effective April 1, 2013.

~~1. The following changes to a permit require compliance with all the provisions of section ~~43-05-01-05~~:~~

~~a. Any change in the areal extent of the storage facility;~~

~~b. Using a reservoir not specified in the permit;~~

~~c. Any increase in the carbon dioxide storage volume; and~~

~~d. Any change in the chemical composition of the injected carbon dioxide.~~

~~2. Significant changes to operational methods and procedures contained in the permit or upon which the permit was based will require compliance with subsection 2 of section ~~43-05-01-05~~.~~

History: Effective April 1, 2010;

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-07.1. Permitting.

1. Application for a permit under this chapter:
 - a. Any person who is required to have a permit shall complete, sign, and submit a permit application to the commission.
 - b. When the owner and storage operator are different, it is the storage operator's duty to obtain a permit.
 - c. The commission shall not begin processing a permit until the applicant has fully complied with the application requirements for that permit.
 - d. The application must be complete before the permit is issued. An application for a permit is complete when the commission receives an application form and any supplemental information which are completed to the commission's satisfaction.
2. All permit applications, reports, or information submitted to the commission must comply with the following signature and certification requirements:
 - a. All permit applications must be signed as follows:
 - (1) For a corporation by a principal executive officer of at least the level of vice president;
 - (2) For a partnership or sole proprietorship by a general partner or the proprietor, respectively; or
 - (3) For a municipality, state, federal, or other public agency by either a principal executive officer or ranking elected official.
 - b. All reports required by permits and other information requested by the commission must be signed by a person described in subdivision a, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - (1) The authorization is made in writing by a person described in subdivision a;
 - (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

- (3) The written authorization is submitted to the commission.
- c. If an authorization under subdivision b is no longer accurate because a different individual or position has responsibility for the overall operation of the storage facility, a new authorization pursuant to subdivision b must be submitted to the commission prior to or together with any reports, information, or applications to be signed by an authorized representative.
- d. Any person signing a document under subdivision a or b shall make certification under penalty of law that that person has personally examined and is familiar with the information submitted in the document and all attachments and that, based on inquiry of those individuals immediately responsible for obtaining the information, the person believes that the information is true, accurate, and complete. Further, the person shall certify awareness that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment.
3. Applicants shall provide the following information to the commission:
- a. The activities conducted by the applicant which require it to obtain a storage facility permit or other federal, state, or local permits;
- b. Name, mailing address, and location of the storage facility for which the application is submitted;
- c. Up to four standard industrial classification codes which best reflect the principal products or services provided by the facility;
- d. The storage operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;
- e. Whether the storage facility is located on Indian lands, historic or archaeological sites; and
- f. A listing of all environmental permits, construction approvals, or any other relevant permit received or applied for from the commission or any other federal, state, or local regulatory agency.
4. Applicants shall retain records of all data used to complete permit applications and supplemental information until project completion. Upon project completion, the storage operator shall deliver any records required in this section to the commission.

5. Storage operators applying to drill a new injection well shall submit an application within a reasonable time before construction is expected to begin.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-07.2. Draft permits and fact sheets.

1. Draft permits.

- a. When a storage facility permit application is complete, the commission shall either prepare a draft permit or deny the application.
- b. Before preparing the draft permit, the commission shall consult the state department of health.
- c. The draft permit must contain the permit conditions required under sections 43-05-01-07.3 and 43-05-01-07.4.

2. Fact sheets.

- a. A fact sheet must be prepared for each draft permit.
- b. The fact sheet and draft permit must be sent to the applicant and, upon request, to any other person.
- c. The fact sheet must include:
 - (1) A brief description of the type of facility or activity which is the subject of the draft permit;
 - (2) The quantity and quality of the carbon dioxide which is proposed to be injected and stored;
 - (3) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions;
 - (4) The reasons why any requested variances or alternatives to required standards do or do not appear justified;
 - (5) A description of the procedures for reaching a final decision on the draft permit, including:
 - (a) The beginning and ending dates of the comment period;

- (b) The address where comments will be received;
 - (c) The date, time, and location of the storage facility permit hearing; and
 - (d) Any other procedures by which the public may participate in the final decision.
- (6) The name and telephone number of a person to contact for additional information.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-07.3. Permit conditions. The following conditions apply to all storage facility permits:

1. The storage operator shall comply with all conditions of the permit. Any noncompliance with the permit constitutes a violation and is grounds for enforcement action, including permit termination, revocation, or modification pursuant to section 43-05-01-12.
2. In an administrative action, it shall not be a defense that it would have been necessary for the storage operator to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
3. The storage operator shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the storage facility permit.
4. The storage operator shall develop and implement an emergency and remedial response plan pursuant to section 43-05-01-13.
5. The storage operator shall at all times properly operate and maintain all storage facilities which are installed or used by the storage operator to achieve compliance with the conditions of the storage facility permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the storage facility permit.
6. The permit may be modified, revoked and reissued, or terminated pursuant to section 43-05-01-12. The filing of a request by the storage operator for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

7. The injection well permit or the permit to operate an injection well does not convey any property rights of any sort or any exclusive privilege.
8. The storage operator shall furnish to the commission, within a time specified by the commission, any information which the commission may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The storage operator shall also furnish to the commission, upon request, copies of records required to be kept by the storage facility permit.
9. The storage operator shall allow the commission, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
 - a. Enter upon the storage facility premises where records must be kept under the conditions of the permit;
 - b. At reasonable times, have access to and copy any records that must be kept under the conditions of the permit;
 - c. At reasonable times, inspect any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under the permit; and
 - d. At reasonable times, sample or monitor for the purposes of assuring permit compliance, any substances or parameters at any location.
10. The storage operator shall prepare, maintain, and comply with a testing and monitoring plan pursuant to section 43-05-01-11.4.
11. The storage operator shall comply with the reporting requirements provided in section 43-05-01-18.
12. The storage operator must obtain an injection well permit under section 43-05-01-10 and injection wells must meet the construction and completion requirements in section 43-05-01-11.
13. The storage operator shall prepare, maintain, and comply with a plugging plan pursuant to section 43-05-01-11.5.
14. The storage operator shall establish mechanical integrity prior to commencing injection and maintain mechanical integrity pursuant to section 43-05-01-11.1.
15. The storage operator shall implement the worker safety plan pursuant to section 43-05-01-13.

16. The storage operator shall comply with leak detection and reporting requirements pursuant to section 43-05-01-14.
17. The storage operator shall conduct a corrosion monitoring and prevention program pursuant to section 43-05-01-15.
18. The storage operator shall prepare, maintain, and comply with the area of review and corrective action plan pursuant to section 43-05-01-05.1.
19. The storage operator shall maintain financial responsibility pursuant to section 43-05-01-09.1.
20. The storage operator shall maintain and comply with the postinjection site care and facility closure plan pursuant to section 43-05-01-19.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-07.4. Establishing permit conditions.

1. In addition to conditions required in section 43-05-01-07.3, the commission shall establish conditions, as required on a case-by-case basis. Storage facility permits shall include conditions meeting the requirements of this chapter and such additional conditions as are necessary to prevent the endangerment of underground sources of drinking water.
2. The commission shall establish conditions in any permit as required on a case-by-case basis, to provide for and assure compliance with all statutory or regulatory requirements which take effect prior to final administrative disposition of the permit.
3. New or reissued permits, and to the extent allowed under section 43-05-01-12 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this section.
4. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-08. ~~Amalgamation of subsurface rights to operate geological storage unit~~ Storage facility permit hearing.

1. ~~On or before the date a permit application is filed with the commission~~ The commission shall hold a public hearing before issuing a storage facility permit. At least forty-five days prior to the hearing, the applicant shall give notice of the hearing to the following ~~notice that it has filed the application:~~
 - a. Each operator of mineral extraction activities within the facility area and within one-half mile [.80 kilometer] ~~outside of the facility area~~ its outside boundary;
 - b. Each mineral lessee of record within the facility area and within one-half mile [.80 kilometer] of its outside boundary;
 - c. Each owner of record of the surface within the facility area and one-half mile [.80 kilometer] of its outside boundary;
 - d. Each owner of record of minerals within the ~~project~~ facility area and within one-half mile [.80 kilometer] of its outside boundary;
 - e. Each owner and each lessee of record of the pore space within the storage reservoir and within one-half mile [.80 kilometer] of the reservoir's boundary; and
 - f. Any other persons as required by the commission.
2. The notice given by the applicant must contain:
 - a. A legal description of the land ~~overlying the storage reservoir~~ within the facility area.
 - b. The date, time, and place that the commission will hold a hearing on the permit application.
 - c. A statement that a copy of the permit application and draft permit may be obtained from the commission.
 - d. ~~A notice of the right to file comments~~ statement that all comments regarding the storage facility permit application must be in writing and submitted to the commission prior to the hearing or presented at the hearing.
 - e. A statement that amalgamation of the storage reservoirs pore space is required to operate the storage facility, that the commission may require that the pore space owned by nonconsenting owners be included in the storage facility and

subject to geologic storage, and the amalgamation of pore space will be considered at the hearing.

3. The commission shall give at least ~~fifteen days'~~ a thirty-day public notice and comment period for a draft storage facility permit, except in an emergency, including notice 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. The public notice must state that an application has been filed with the commission for permission to store carbon dioxide and describe the location of the proposed facility area and the date, time, and place of the hearing before the commission at which time the merits of the application and draft permit will be considered.
4. ~~Objections received by the commission shall be in writing and specify the nature of the objection.~~ The public notice given by the commission must contain the following:
 - a. Name and address of the commission:
 - b. Name and address of the applicant:
 - c. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures:
 - d. A brief description of the activity described in the storage facility permit application or the draft storage facility permit:
 - e. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft storage facility permit, fact sheet, and the storage facility permit application:
 - f. A brief description of the comment procedures and other procedures by which the public may participate in the final permit decision:
 - g. The date of any previous public notices relating to the storage facility; and
 - h. Any additional information that the commission requires.
5. Public notice shall be given by the following methods:

a. By mailing or e-mailing a copy of the notice, the fact sheet, the storage facility permit application, and draft permit to the following:

- (1) The applicant;
- (2) The state department of health;
- (3) The state geological survey;
- (4) The state water commission;
- (5) The United States environmental protection agency; and
- (6) Federal and state agencies with jurisdiction over fish and wildlife resources, the advisory council on historic preservation, and state historical preservation officers, including any affected Indian tribes and the bureau of Indian affairs.

b. By mailing or e-mailing of copy of the public notice to the following:

- (1) To any unit of local government having jurisdiction over the area where the storage facility is proposed to be located and to each state agency having any authority under state law with respect to the construction or operation of such facility.
- (2) Any other person or group either upon request or on a departmental mailing list to receive geologic storage of carbon dioxide public notices:
 - (a) Including those who request in writing to be on the list;
 - (b) Persons on "area lists" from past permit proceedings in that area; and
 - (c) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as state-funded newsletters, environmental bulletins, or state law journals. The commission may update the mailing list from time to time by requesting written indication of continued interest from those listed. The commission may delete from the list the name of any person who fails to respond to such a request.

6. During the public comment period any interested person may submit written comments on the draft storage facility permit or the storage facility permit application. All comments shall be considered in making

the final decision and shall be answered when a final storage facility permit is issued. The response to comments must include:

- a. Provisions, if any, of the draft permit that have been changed in the final permit decision, and the reasons for the change; and
 - b. A brief description and response to all significant comments on the draft permit or the permit application.
7. The response to all applicable comments shall be available to the public.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-09. Well permit application requirements.

1. Following receipt of a storage facility permit, the storage operator shall ~~submit applications~~ obtain a permit to drill, deepen, convert, operate, or, upon demonstration of mechanical integrity, reenter a previously plugged and abandoned well for storage purposes.
2. Application for permits to drill, deepen, convert, operate, or reenter a well must be submitted on ~~a form prescribed~~ 25 provided by the commission and must include at a minimum:
 - a. ~~A plat prepared by a licensed land~~ An accurate plat certified by a registered surveyor showing the location of the proposed injection or subsurface observation well. The plat must be drawn to the scale of one inch [25.4 millimeters] equals one thousand feet [304.8 meters], unless otherwise directed by the commission, and must show distances from the proposed well to the nearest ~~storage reservoir~~ facility area boundary. The plat must show the latitude and longitude of the proposed well ~~in decimal degrees to five significant digits~~ location to the nearest tenth of a second. The plat must also show the location and status of all other wells that have been drilled within one-fourth mile [402.34 meters], or any other distance deemed necessary by the commission, of the proposed injection or subsurface observation well;
 - b. The drilling, completion, or conversion procedures for the proposed injection or subsurface observation well;
 - c. A well bore schematic showing the name, description, and depth of the storage reservoirs and the depth of the deepest underground source of drinking water; a description of the casing in the injection or subsurface observation well, or the proposed casing program, including a full description of cement already in place or as

proposed; and the proposed method of testing casing before use of the injection well;

d. A geophysical log, if available, through the storage reservoir to be penetrated by the proposed injection well or if an injection or subsurface observation well is to be drilled, a complete log through the reservoir from a nearby well is permissible. Such log must be annotated to identify the estimated location of the base of the deepest underground source of drinking water, showing the stratigraphic position and thickness of all confining strata above the reservoirs and the stratigraphic position and thickness of the reservoir-; and

e. The proposed pad layout, including cut and fill diagrams.

3. ~~No later than~~ Within thirty days after the conclusion of well drilling and completion activities, a permit application shall be submitted to operate an injection well and must include at a minimum:

a. A schematic diagram of the surface injection system and its appurtenances;

b. A final well bore diagram showing the name, description, and depths of the storage reservoir and the base of the deepest underground source of drinking water and a diagram of the well depicting the casing, cementing, perforation, tubing, and plug and packer records associated with the construction of the well;

c. The well's complete dual induction or equivalent log through the storage reservoir. Such a log shall be run prior to setting casing through the storage reservoir. Logs must be annotated to identify the estimated location of the base of the deepest underground source of drinking water, showing the stratigraphic position and thickness of all confining strata above the storage reservoir and the reservoir's stratigraphic position and thickness unless that information has been previously submitted. When approved in advance by the commission, this information can be demonstrated with a dual induction or equivalent log run in a nearby well or by such other method acceptable to the commission;

d. An affidavit specifying the chemical constituents, their relative proportions and the physical properties of the ~~injection carbon dioxide~~ stream ~~other than carbon dioxide and their relative proportions,~~ and the source of the carbon dioxide stream;

e. Proof that the long string of casing of the well is cemented adequately so that the carbon dioxide is confined to the storage reservoirs. Such proof must be provided in the form of a cement

bond log or the results of a fluid movement study or such other method specified by the commission; ~~and~~

- f. The results of a mechanical-integrity test, if applicable to well type, of the casing in accordance with the pressure test requirements of this section if a test was run within one calendar year preceding the request for a conversion permit for a previously drilled well;
- g. The final area of review based on modeling, using data obtained during logging and testing of the well and the formation, including any relevant updates on the geologic structure and hydrogeologic properties of the proposed storage reservoir and overlying formations;
- h. Information on the compatibility of the carbon dioxide stream with the fluids in the injection zone and minerals in both the injection and the confining zone, based on the results of the formation testing program, and with the materials used to construct the well;
- i. The results of the formation testing program;
- j. The status of corrective action on wells in the area of review;
- k. All available logging and testing program data on the well;
- l. Any updates to the proposed area of review and corrective action plan, testing and monitoring plan, injection well plugging plan, postinjection site care and facility closure plan, and the emergency and remedial response plan, which are necessary to address new information collected during logging and testing of the well; and
- m. Any other information that the commission requires.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-09.1. Financial responsibility.

- 1. The storage operator shall demonstrate and maintain financial responsibility as determined by the commission that meets the following conditions:
 - a. The qualifying financial responsibility instrument used must be from the following list of qualifying instruments:
 - (1) Trust funds;
 - (2) Surety or cash bonds;

- (3) Letter of credit;
- (4) Insurance;
- (5) Self-insurance (i.e., financial test and corporate guarantee);
- (6) Escrow account; or
- (7) Any other instrument the commission finds satisfactory.

b. The qualifying financial responsibility instrument must be sufficient to cover the cost of:

- (1) Corrective action that meets the requirements of section 43-05-01-05.1;
- (2) Injection well plugging that meets the requirements of section 43-05-01-11.5;
- (3) Postinjection site care and facility closure that meets the requirements of section 43-05-01-19; and
- (4) Emergency and remedial response that meets the requirements of section 43-05-01-13.

c. The qualifying financial responsibility instrument must be sufficient to address endangerment of underground sources of drinking water.

d. The qualifying financial responsibility instrument must comprise protective conditions of coverage.

- (1) Protective conditions of coverage must include at a minimum cancellation, renewal, and continuation provisions; specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial responsibility instrument; and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.
- (2) Cancellation. The storage operator shall provide that its financial mechanism may not cancel, terminate, or fail to renew except for failure to pay such financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the storage operator and the commission. The cancellation must not be final for one hundred twenty days after receipt

of cancellation notice. The storage operator shall provide an alternate qualifying financial responsibility demonstration within sixty days of notice of cancellation, and if it is not acceptable or possible, any funds from the instrument being canceled must be released to the commission within sixty days of notification by the commission.

(3) Renewal. The storage operator shall renew all qualifying financial responsibility instruments, if an instrument expires, for the entire term of the geologic sequestration project. The instrument must be automatically renewed as long as the storage operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal must, at a minimum, provide the storage operator with the option of renewal at the face amount of the expiring financial instrument.

(4) Cancellation, termination, or failure to renew may not occur and the financial instrument will remain in full force and effect in the event that on or before the date of expiration:

(a) The commission deems the facility abandoned;

(b) The permit is terminated or revoked or a new permit is denied;

(c) Closure is ordered by the commission or a United States district court or other court of competent jurisdiction;

(d) The storage operator is named as debtor in a voluntary or involuntary proceeding under title 11 (bankruptcy), United States Code; or

(e) The amount due is paid.

e. The qualifying financial responsibility instrument is subject to the commission's approval.

(1) The commission shall consider and approve the qualifying financial responsibility demonstration for all the phases of the geologic sequestration project prior to issuing a storage facility permit.

(2) The storage operator shall provide any updated information related to its qualifying financial responsibility instrument on an annual basis and, if there are any changes, the commission must evaluate, within a reasonable time, the qualifying financial responsibility demonstration to confirm

that the instrument used remains adequate. The storage operator shall maintain financial responsibility requirements regardless of the status of the commission's review of the financial responsibility demonstration.

(3) The commission may disapprove the use of a financial instrument if it determines that it is not sufficient to meet the requirements of this section.

f. Upon the commission's approval, the storage operator may demonstrate financial responsibility by using one or multiple qualifying financial responsibility instruments for specific phases of the geologic sequestration project.

If the storage operator combines more than one instrument for a specific geologic sequestration phase (e.g., well plugging), such combination must be limited to instruments that are not based on financial strength or performance (i.e., self-insurance or performance bond), for example trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account, and insurance. In this case, it is the combination of mechanisms, rather than the single mechanism, which must provide financial responsibility for an amount at least equal to the current cost estimate.

g. When using a third-party instrument to demonstrate financial responsibility, the storage operator shall provide proof that the third-party providers either have passed financial strength requirements based on credit ratings; or have met a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

h. The storage operator using certain types of third-party instruments shall establish a standby trust to enable the commission to be party to the financial responsibility agreement without the commission being the beneficiary of any funds. The standby trust fund must be used along with other qualifying financial responsibility instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if needed.

i. If the storage operator uses a surety bond or cash bond to satisfy its financial responsibility requirements, the storage operator shall be the principal on the bond and each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota.

j. If the storage operator uses an escrow account to satisfy its financial responsibility requirements, the account must segregate

funds sufficient to cover estimated costs for geologic sequestration financial responsibility from other accounts and uses.

k. If the storage operator or its guarantor uses self-insurance to satisfy its financial responsibility requirements, the storage operator shall:

- (1) Meet a tangible net worth of an amount approved by the commission;
- (2) Have a net working capital and tangible net worth each at least six times the sum of the current well plugging, postinjection site care, and facility closure cost;
- (3) Have assets located in the United States amounting to at least ninety percent of total assets or at least six times the sum of the current well plugging, postinjection site care, and facility closure cost; and
- (4) Must submit a report of its bond rating and financial information annually.

l. In addition to the requirements in subdivision k, the storage operator shall either:

- (1) Have a bond rating test of AAA, AA, A, or BBB as issued by Standard & Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; or
- (2) Meet all of the following five financial ratio thresholds:
 - (a) A ratio of total liabilities to net worth less than 2.0;
 - (b) A ratio of current assets to current liabilities greater than 1.5;
 - (c) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1;
 - (d) A ratio of current assets minus current liabilities to total assets greater than -0.1; and
 - (e) A net profit (revenues minus expenses) greater than zero.

m. The storage operator who is not able to meet corporate financial test criteria in the preceding provision, may arrange a corporate guarantee by demonstrating that its corporate parent meets the financial test requirements on its behalf. The parent's

demonstration that it meets the financial test requirement is insufficient if it has not also guaranteed to fulfill the obligations for the storage operator.

- n. If the storage operator uses an insurance policy to satisfy its financial responsibility requirements, the insurance policy must be obtained from a third-party provider.
2. The requirement to maintain commission-approved qualifying financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.
- a. The storage operator shall maintain qualifying financial responsibility and resources until the commission approves project completion.
 - b. The storage operator may be released from a financial instrument in the following circumstances:
 - (1) The storage operator has completed the phase of the geologic sequestration project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the commission, including obtaining financial responsibility for the next phase of the geologic sequestration project, if required:
 - (2) The storage operator has submitted a replacement financial instrument and received written approval from the commission accepting the new financial instrument and releasing the storage operator from the previous financial instrument; or
 - (3) The commission approves project completion.
3. The storage operator shall have a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection well, postinjection site care and facility closure, and emergency and remedial response.
- a. The cost estimate must be performed for each phase separately and must be based on the costs to the commission of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the storage operator:
 - b. During the active life of the geologic sequestration project, the storage operator shall adjust the cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instrument used to comply with this section and provide this adjustment to the commission. The storage operator shall

also provide to the commission written updates of adjustments to the cost estimate within sixty days of any amendments to the area of review and corrective action plan, the injection well plugging plan, the postinjection site care and facility closure plan, and the emergency and remedial response plan;

- c. Any decrease or increase to the initial cost estimate is subject to the commission's approval. During the active life of the geologic sequestration project, the storage operator shall revise the cost estimate no later than sixty days after the commission has approved the request to modify the area of review and corrective action plan, the injection well plugging plan, the postinjection site care and facility closure plan, and the emergency and remedial response plan, if the change in the plan increases the cost. If the change to the plans decreases the cost, any withdrawal of funds is subject to the commission's approval. Any decrease to the value of the financial responsibility instrument must first be approved by the commission. The revised cost estimate must be adjusted for inflation; and
 - d. Whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the storage operator, within sixty days after the increase, shall either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the commission, or obtain other qualifying financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the storage operator has received written approval from the commission.
4. The storage operator shall notify the commission by certified mail of adverse financial conditions that may affect the operator's ability to carry out its obligations under state and federal laws.
- a. If the storage operator or the third-party provider of a qualifying financial responsibility instrument is named as the debtor in a bankruptcy proceeding, the notice to the commission must be made within ten days after commencement of the proceeding;
 - b. A guarantor of a corporate guarantee shall make the notification required in subdivision a if the guarantor is named as debtor, as required under the terms of the corporate guarantee; and
 - c. The storage operator who fulfills its financial responsibility requirements by obtaining a trust fund, surety bond, letter of credit, escrow account, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the

trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee of the institution issuing the trust fund, surety bond, letter of credit, escrow account, or insurance policy. The storage operator shall establish other financial assurance within sixty days after such an event.

5. The storage operator shall provide an adjustment of the cost estimate to the commission within sixty days of notification by the commission, if the commission determines during the annual evaluation of the qualifying financial responsibility instrument that the most recent demonstration is no longer adequate to cover the operator's obligations under state and federal laws.
6. The use and length of pay-in periods for trust funds or escrow accounts are subject to the commission's approval. The storage operator may make periodic deposits into a trust fund or escrow account throughout the operational period in order to ensure sufficient funds are available to carry out the required activities on the date on which they may occur. The commission shall take into account project-specific risk assessments, projected timing of activities (e.g., postinjection site care), and interest accumulation in determining whether sufficient funds are available to carry out the required activities.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-10. Well Injection well permit.

1. Upon review and approval of the application to drill, deepen, convert, reenter, or operate an injection well, submitted in accordance with section 43-05-01-09, the commission shall issue permits to drill and operate.
2. A permit shall expire twelve months from the date of issue if the permitted well has not been drilled, deepened, reentered, operated, or converted.
3. Injection well permits must be issued for the operating life of the storage facility and the closure period.
4. The commission shall review each issued injection well permit at least once every five years to determine whether it should be modified, revoked, or a minor modification made.
5. On a case-by-case basis when required by the commission, the storage operator shall submit a schedule of compliance leading to full compliance with all provisions of this chapter and North Dakota Century Code chapter 38-22.

- a. Any schedules of compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.
 - b. If the schedule of compliance is for a duration of more than one year from the date of permit issuance, then interim requirements and completion dates (not to exceed one year) must be incorporated into the compliance schedule and permit.
 - c. No later than thirty days following each interim and final date, the storage operator shall submit progress reports to the commission.
6. For the purposes of enforcement, compliance with an injection well permit during its term means compliance with this chapter and North Dakota Century Code chapter 38-22. However, a permit may be modified, revoked, or terminated during its term pursuant to section 43-05-01-12.
7. The issuance of an injection well permit does not convey any property rights of any sort or any exclusive privilege.
8. The issuance of an injection well permit does not authorize any injury to persons or property or invasion of other private rights or any infringement of state or local law or regulations.
9. Injection is prohibited until construction is complete, and
- a. The storage operator has submitted notice of completion of construction to the commission;
 - b. The commission has issued an approved permit to operate an injection well; and
 - c. The commission has inspected or otherwise reviewed the injection well and finds it is in compliance with the conditions of the permit;
or
 - d. The storage operator has not received notice from the commission of its intent to inspect the injection well within fourteen days of the date of the notice in subdivision a, in which case prior inspection or review is waived and the storage operator may commence permitted injection. The commission shall include in the notice a reasonable time period in which it shall inspect the well.
10. The permit shall establish any maximum injection volumes and pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into

any underground source of drinking water, and to assure compliance with section 43-05-01-11.3.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-11. ~~Well—operational~~ Injection well construction and completion standards.

1. The storage operator shall ensure that all injection wells are constructed and completed to prevent movement of the carbon dioxide stream or fluids into underground sources of drinking water or outside the authorized storage reservoir. The injection wells must be constructed and completed in a way that allows the use of appropriate testing devices and workover tools. The casing and cement or other materials used in the construction of each new injection well must be designed for the well's life expectancy. In determining and specifying casing and cementing requirements, all of the following factors must be considered:
 - a. Depth to the injection zone;
 - b. Injection pressure, external pressure, internal pressure, and axial loading;
 - c. Hole size;
 - d. Size and grade of all casing strings (wall thickness, external diameter, nominal weight, length, joint specification, and construction material);
 - e. Corrosiveness of the carbon dioxide stream and formation fluids;
 - f. Down-hole temperatures;
 - g. Lithology of injection and confining zone;
 - h. Type or grade of cement and cement additives; and
 - i. Quantity, chemical composition, and temperature of the carbon dioxide stream.
2. Surface casing in all newly drilled carbon dioxide injection and subsurface observation wells drilled below the underground source of drinking water must be set fifty feet [15.24 meters] below the base of the ~~Fox Hills formation~~ lowermost underground source of drinking water and cemented pursuant to section 43-02-03-21.

- ~~2-~~ 3. The long string casing in all injection and subsurface observation wells must be cemented pursuant to section 43-02-03-21. Sufficient cement must be used on the long string casing to fill the annular space behind the casing to the surface of the ground and a sufficient number of centralizers shall be used to assure a good cement job. The long string casing must extend to the injection zone.
- ~~3-~~ 4. Any liner set in the well bore must be cemented with a sufficient volume of cement to fill the annular space.
- ~~4-~~ 5. All cements used in the cementing of casings in injection and subsurface observation wells must be of sufficient quality to maintain well integrity in the carbon dioxide injection environment. Circulation of cement may be accomplished by staging. The commission may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the storage operator can demonstrate by using logs that the cement does not allow fluid movement behind the well bore.
- ~~5-~~ 6. All casings must meet the standards specified in ~~either~~ any of the following documents, which are hereby adopted by reference:
- a. The most recent American petroleum institute bulletin on performance properties of casing, tubing, and drill pipe;
 - b. Specification for casing and tubing (United States customary units), American petroleum institute specification 5CT, as published by the American petroleum institute ~~in October 1998~~;
 - c. North Dakota Administrative Code section 43-02-03-21; or
 - d. Other equivalent casing as approved by the commission.
- ~~6-~~ 7. All casings used in new wells must be new casing or reconditioned casing of a quality equivalent to new casing and that has been pressure-tested in accordance with the requirements of subsection ~~5~~ 6. For new casings, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill the requirements of subsection ~~5~~ 6.
- ~~7-~~ 8. The location and amount of cement behind casings must be verified by ~~a cement bond log, cement evaluation log, or any other~~ an evaluation method approved by the commission. The evaluation method must be capable of evaluating cement quality radially and identifying the location of channels to ensure that underground sources of drinking water are not endangered.
- ~~8-~~ 9. All injection wells must be completed with and injection must be through tubing and packer. In order for the commission to determine and specify

requirements for tubing and packer, the storage operator shall submit the following information:

- a. Depth of setting:
- b. Characteristics of the carbon dioxide stream (chemical content, corrosiveness, temperature, and density) and formation fluids:
- c. Maximum proposed injection pressure:
- d. Maximum proposed annular pressure:
- e. Proposed injection rate (intermittent or continuous) and volume and mass of the carbon dioxide stream:
- f. Size of tubing and casing: and
- g. Tubing tensile, burst, and collapse strengths.

- ~~9.~~ 10. All tubing strings must meet the standards contained in subsection ~~5~~ 6. All tubing must be new tubing or reconditioned tubing of a quality equivalent to new tubing and that has been pressure-tested. For new tubing, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill this requirement.
- ~~10.~~ 11. All wellhead components, including the casinghead and tubing head, valves, and fittings, must be made of steel having operating pressure ratings sufficient to exceed the maximum injection pressures computed at the wellhead and to withstand the corrosive nature of carbon dioxide. Each flow line connected to the wellhead must be equipped with a manually operated positive shutoff valve located on or near the wellhead.
- ~~11.~~ 12. All packers, packer elements, or similar equipment critical to the containment of carbon dioxide must be of a quality to withstand exposure to carbon dioxide.
- ~~12.~~ 13. All injection wells must have at all times an accurate, operating pressure gauge or pressure recording device. Gauges must be calibrated as required by the commission and evidence of such calibration must be available to the commission upon request.
- ~~13.~~ 14. All newly drilled wells must establish internal and external mechanical integrity as specified by the commission and demonstrate continued mechanical integrity through periodic testing as determined by the commission. All other wells to be used as injection wells must demonstrate mechanical integrity as specified by the commission prior to use for injection and be tested on an ongoing basis as determined by the commission using these methods:

- a. Pressure tests. Injection wells, equipped with tubing and packer as required, must be pressure-tested as required by the commission. A testing plan must be submitted to the commission for prior approval. At a minimum, the pressure must be applied to the tubing casing annulus at the surface for a period of thirty minutes and must have no decrease in pressure greater than ten percent of the required minimum test pressure. The packer must be set at a depth at which the packer will be opposite a cemented interval of the long string casing and must be set no more than fifty feet [15.24 meters] above the uppermost perforation or open hole for the storage reservoirs; and
 - b. The commission may require additional testing, such as a bottom hole temperature and pressure measurements, tracer survey, temperature survey, gamma ray log, neutron log, noise log, casing inspection log, or a combination of two or more of these surveys and logs, to demonstrate mechanical integrity.
- 44: 15. The commission has the authority to witness all mechanical integrity tests conducted by the storage operator.
- 45: 16. If an injection well fails to demonstrate mechanical integrity by an approved method, the storage operator shall immediately shut in the well, report the failure to the commission, and commence isolation and repair of the leak. The operator shall, within ninety days or as otherwise directed by the commission, perform one of the following:
- a. Repair and retest the well to demonstrate mechanical integrity; or
 - b. Properly plug the well; ~~or,~~
 - ~~c. Comply with an alternative plan approved by the commission.~~
- 46: 17. All injection wells must be equipped with shutoff systems designed to alert the operator and shut in wells when necessary.
- 47: 18. Additional requirements may be required by the commission to address specific circumstances and types of projects.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-11.1. Mechanical integrity - Injection wells.

- 1. An injection well has mechanical integrity if:
 - a. There is no significant leak in the casing, tubing, or packer; and

- b. There is no significant fluid movement into an underground source of drinking water through channels adjacent to the well bore.
- 2. To evaluate the absence of significant leaks, the storage operator shall, following initial annulus pressure test, continuously monitor injection pressure, rate, injected volumes, pressure on the annulus between tubing and long string casing, and annulus fluid volume.
- 3. On a schedule determined by the commission, but at least annually, the storage operator shall use one of the following methods to determine the absence of significant fluid movement:
 - a. An approved tracer survey; or
 - b. A temperature or noise log.
- 4. If required by the commission, at a frequency specified in the testing and monitoring plan, the storage operator shall run a casing inspection log to determine the presence or absence of corrosion in the long string casing.
- 5. The commission may require alternative and additional methods to evaluate mechanical integrity. Also, the commission may allow the use of an alternative method to demonstrate mechanical integrity other than those listed above with the written approval of the United States environmental protection agency administrator. To obtain approval for a new mechanical integrity test, the commission shall submit a written request to the United States environmental protection agency administrator.
- 6. To conduct and evaluate mechanical integrity, the storage operator shall apply methods and standards generally accepted in the industry. When the storage operator reports the results of mechanical integrity tests to the commission, the storage operator shall include a description of the test and the method used.
- 7. The commission may require additional or alternative tests if the results presented by the storage operator are not satisfactory to the commission to demonstrate mechanical integrity.
- 8. If the commission determines that an injection well lacks mechanical integrity pursuant to this section, the commission shall give written notice of its determination to the storage operator. Unless the commission requires immediate cessation of injection, the storage operator shall cease injection into the well within forty-eight hours of receipt of the commission's determination. The commission may allow plugging of the well pursuant to the requirements of section 43-05-01-11.5 or require the storage operator to perform such additional construction, operation, monitoring, reporting, and

corrective action as is necessary to prevent the movement of fluid into or between underground sources of drinking water caused by the lack of mechanical integrity. The storage operator may resume injection upon written notification from the commission that the storage operator has demonstrated mechanical integrity pursuant to this section.

9. The commission may allow the storage operator of an injection well that lacks mechanical integrity pursuant to this section to continue or resume injection, if the storage operator has made a satisfactory demonstration that there is no movement of fluid into or between underground sources of drinking water.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-11.2. Logging, sampling, and testing prior to injection well operation.

1. During the drilling and construction of an injection well, the storage operator shall run appropriate logs, surveys, and tests to determine or verify the depth, thickness, porosity, permeability, lithology, and salinity of any formation fluids in all relevant geologic formations to ensure conformance with the injection well construction requirements under section 43-05-01-11, and to establish accurate baseline data against which future measurements may be compared. The storage operator shall submit to the commission a descriptive report prepared by a log analyst that includes an interpretation of the results of such logs and tests. At a minimum, such logs and tests must include:
 - a. Deviation checks during drilling on all holes constructed by drilling a pilot hole which is enlarged by reaming or another method. Such checks must be at sufficiently frequent intervals to determine the location of the borehole and to ensure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.
 - b. Before and upon installing the surface casing:
 - (1) Resistivity, spontaneous potential, and caliper logs before the casing is installed; and
 - (2) A cement bond and variable density log to evaluate cement quality radially, and a temperature log after the casing is set and cemented.
 - c. Before and upon installation of the long string casing:

- (1) Resistivity, spontaneous potential, porosity, caliper, gamma ray, fracture finder logs, and any other logs the commission requires for the given geology before the casing is installed; and
 - (2) A cement bond and variable density log and a temperature log after the casing is set and cemented.
 - d. A series of tests designed to demonstrate the internal and external mechanical integrity of injection wells, which may include:
 - (1) A pressure test with liquid or gas;
 - (2) A tracer survey;
 - (3) A temperature or noise log;
 - (4) A casing inspection log; and
 - e. Any alternative methods that provide equivalent or better information and that the commission requires or approves.
 2. The storage operator shall take whole cores or sidewall cores of the injection zone and confining zone and formation fluid samples from the injection zone, and shall submit to the commission a detailed report prepared by a log analyst that includes well log analyses (including well logs), core analyses, and formation fluid sample information. The commission may accept information on cores from nearby wells if the storage operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The commission may require the storage operator to core other formations in the borehole.
 3. The storage operator shall record the fluid temperature, pH, conductivity, reservoir pressure, and static fluid level of the injection zone.
 4. At a minimum, the storage operator shall determine or calculate the following information concerning the injection and confining zone:
 - a. Fracture pressure;
 - b. Other physical and chemical characteristics of the injection and confining zone; and
 - c. Physical and chemical characteristics of the formation fluids in the injection zone.

5. Upon completion, but prior to operation, the storage operator shall conduct the following tests to verify hydrogeologic characteristics of the injection zone:
 - a. Pressure fall-off test; and
 - b. Pump test; or
 - c. Injectivity test.
6. The storage operator shall provide the commission with the opportunity to witness all logging and testing carried out under this section. The storage operator shall submit a schedule of such activities to the commission thirty days prior to conducting the first test and submit any changes to the schedule thirty days prior to the next scheduled test.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-11.3. Injection well operating requirements.

1. Except during stimulation, the storage operator shall ensure that injection pressure does not exceed ninety percent of the fracture pressure of the injection zone so as to ensure that the injection does not initiate new fractures or propagate existing fractures in the injection zone. Injection pressure must never initiate fractures in the confining zone or cause the movement of injection or formation fluids that endanger an underground source of drinking water. All stimulation programs are subject to the commission's approval as part of the storage facility permit application and incorporated into the permit.
2. Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.
3. The storage operator shall fill the annulus between the tubing and the long string casing with a noncorrosive fluid approved by the commission. The storage operator shall maintain on the annulus a pressure that exceeds the operating injection pressure, unless the commission determines that such requirement might harm the integrity of the well or endanger underground sources of drinking water.
4. Other than during periods approved by the commission in which the sealed tubing-casing annulus is disassembled for maintenance or corrective procedures, the storage operator shall maintain mechanical integrity of the injection well at all times.
5. The storage operator shall install and use:

- a. Continuous recording devices to monitor the injection pressure; the rate, volume or mass, and temperature of the carbon dioxide stream; and the pressure on the annulus between the tubing and the long string casing and annulus fluid volume; and
 - b. Alarms and automatic surface shutoff systems or, at the discretion of the commission, down-hole shutoff systems (e.g., automatic shutoff, check valves) or, other mechanical devices that provide equivalent protection that are designed to alert the operator and shut-in the well when operating parameters diverge beyond permitted ranges or gradients specified in the permit.
6. If a shutdown (down-hole or at the surface) is triggered or a loss of mechanical integrity is discovered, the storage operator shall immediately investigate and identify the cause as expeditiously as possible. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under subsection 5 indicates that the well may lack mechanical integrity, the storage operator shall:
 - a. Immediately cease injection;
 - b. Take all steps reasonably necessary to determine whether there may have been a release of the injected carbon dioxide stream or formation fluids into any unauthorized zone;
 - c. Notify the commission within twenty-four hours;
 - d. Restore and demonstrate mechanical integrity to the satisfaction of the commission prior to resuming injection; and
 - e. Notify the commission when injection can be expected to resume.
7. If any monitoring indicates the movement of injection or formation fluids into underground sources of drinking water, the commission shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting as are necessary to prevent such movement. These additional requirements must be imposed by modifying or terminating the permit in accordance with section 43-05-01-12 if the commission determines that cause exists, or appropriate enforcement action may be taken if the permit has been violated.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-11.4. Testing and monitoring requirements. The storage operator shall prepare, maintain, and comply with a testing and monitoring plan to

verify that the geologic sequestration project is operating as permitted and is not endangering underground sources of drinking water. The requirement to maintain and implement a commission-approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The plan must be submitted with the storage facility permit application for commission approval and must include a description of how the storage operator will meet the requirements of this section, including accessing sites for all necessary monitoring and testing during the life of the project.

1. The testing and monitoring plan must include:
 - a. Analysis of the carbon dioxide stream in compliance with applicable analytical methods and standards generally accepted by industry and with sufficient frequency to yield data representative of its chemical and physical characteristics;
 - b. Installation and use, except during well workovers, of continuous recording devices to monitor injection pressure, rate, and volume; the pressure on annulus between the tubing and the long string casing; and the annulus fluid volume added;
 - c. Corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting, and other signs of corrosion, which must be performed on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance by:
 - (1) Analyzing coupons of the well construction materials placed in contact with the carbon dioxide stream;
 - (2) Routing the carbon dioxide stream through a loop constructed with the material used in the well and inspecting the materials in the loop; or
 - (3) Using an alternative method approved by the commission;
 - d. Periodic monitoring of the ground water quality and geochemical changes above the confining zone that may be a result of carbon dioxide movement through the confining zone or additional identified zones, including:
 - (1) The location and number of monitoring wells based on specific information about the geologic sequestration project, including injection rate and volume, geology, the presence of artificial penetrations, and other factors; and
 - (2) The monitoring frequency and spatial distribution of monitoring wells based on baseline geochemical data and on any modeling results in the area of review evaluation;

- e. A demonstration of external mechanical integrity at least once per year until the injection well is plugged; and, if required by the commission, a casing inspection log at a frequency established in the testing and monitoring plan;
- f. A pressure fall-off test at least once every five years unless more frequent testing is required by the commission based on site-specific information;
- g. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (e.g., the pressure front) by using:
 - (1) Direct methods in the injection zone; and
 - (2) Indirect methods (e.g., seismic, electrical, gravity, interferometric synthetic aperture radar or electromagnetic surveys and down-hole carbon dioxide detection tools), unless the commission determines, based on site-specific geology, that such methods are not appropriate;
- h. The commission may require surface air monitoring and soil gas monitoring to detect movement of carbon dioxide that could endanger an underground source of drinking water. Regarding these requirements:
 - (1) Design of surface air and soil gas monitoring must be based on potential risks to underground sources of drinking water within the area of review;
 - (2) The monitoring frequency and spatial distribution of surface air monitoring and soil gas monitoring must be based on using baseline data, and the monitoring plan must describe how the proposed monitoring will yield useful information on the area of review; and
 - (3) Surface air monitoring and soil gas monitoring methods are subject to the commission's approval;
- i. Any additional monitoring, as required by the commission, necessary to support, upgrade, and improve computational modeling of the area of review evaluation;
- j. Periodic reviews of the testing and monitoring plan by the storage operator to incorporate monitoring data collected, operational data collected, and the most recent area of review reevaluation performed. The storage operator shall review the testing and monitoring plan at least once every five years. Based on this review, the storage operator shall submit an amended testing

and monitoring plan or demonstrate to the commission that no amendment to the testing and monitoring plan is needed. Any amendments to the testing and monitoring plan are subject to the commission's approval, must be incorporated into the permit, and are subject to the permit modification requirements. Amended plans or demonstrations must be submitted to the commission as follows:

- (1) Within one year of an area of review reevaluation;
 - (2) Following any significant changes to the facility, such as addition of monitoring wells or newly permitted injection wells within the area of review, on a schedule determined by the commission; or
 - (3) When required by the commission; and
- k. A quality assurance and surveillance plan for all testing and monitoring requirements.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual who performed the sampling or measurements;
 - c. The date analyses were performed;
 - d. The individual who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
4. All permits shall specify:
 - a. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;
 - b. Required monitoring, including type, intervals, and frequency sufficient to yield data, which are representative of the monitored activity, including when appropriate, continuous monitoring; and

- c. Applicable reporting requirements based upon the impact of the regulated activity and as specified throughout this chapter. Reporting shall be no less frequent than specified in section 43-05-01-18.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-11.5. Injection well plugging.

1. Prior to the well plugging, the storage operator shall flush each injection well with a buffer fluid, determine bottom hole reservoir pressure, and perform a final external mechanical integrity test.
2. The storage operator shall prepare, maintain, and comply with a plugging plan that is acceptable to the commission. The requirement to maintain and implement a commission-approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The plan must be submitted as part of the storage facility permit application and must include the following:
 - a. Appropriate tests or measures for determining bottom hole reservoir pressure;
 - b. Appropriate testing methods to ensure external mechanical integrity;
 - c. The type and number of plugs to be used;
 - d. The placement of each plug, including the elevation of the top and bottom of each plug;
 - e. The type, grade, and quantity of material to be used in plugging. The material must be compatible with the carbon dioxide stream; and
 - f. The method of placement of the plugs.
3. The storage operator shall notify the commission in writing, at least sixty days before plugging a well, although the commission may allow a shorter period. At this time, if any changes have been made to the original well plugging plan, the storage operator shall also provide the revised well plugging plan. Any amendments to the plan are subject to the commission's approval and must be incorporated into the storage facility permit and are subject to the permit modification requirements.
4. Within sixty days after plugging, the storage operator shall submit a plugging report to the commission. The report must be certified as

accurate by the storage operator and by the person who performed the plugging operation if other than the storage operator. The storage operator shall retain the well plugging report until project completion. Upon project completion the storage operator shall deliver the records to the commission.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-11.6. Injection depth waiver requirements.

1. In seeking a waiver of the requirement to inject below the lowermost underground sources of drinking water, the storage operator shall submit a supplemental report concurrent with the storage facility permit application. The supplemental report must:
 - a. Demonstrate that the injection zone is laterally continuous, is not an underground source of drinking water, and is not hydraulically connected to underground sources of drinking water; does not outcrop; has adequate injectivity, volume, and sufficient porosity to safely contain the injection carbon dioxide and formation fluids; and has appropriate geochemistry;
 - b. Demonstrate that the injection zone is bounded by laterally continuous, impermeable confining units above and below the injection zone adequate to prevent fluid movement and pressure buildup outside of the injection zone; and that the confining unit is free of transmissive faults and fractures. The report shall further characterize the regional fracture properties and demonstrate that such fractures will not interfere with injection, serve as conduits, or endanger underground sources of drinking water;
 - c. Demonstrate, using computational modeling, that underground sources of drinking water above and below the injection zone will not be endangered as a result of fluid movement. This modeling must be conducted in conjunction with the area of review determination, and is subject to requirements and periodic reevaluation;
 - d. Demonstrate that well design and construction, in conjunction with the waiver, will ensure isolation of the injectate in lieu of requirements and will meet well construction requirements;
 - e. Describe how the monitoring and testing and any additional plans will be tailored to the geologic sequestration project to ensure protection of underground sources of drinking water above and below the injection zone, if a waiver is granted;

- f. Provide information on the location of all the public water supplies affected, reasonably likely to be affected, or served by underground sources of drinking water in the area of review; and
 - g. Provide any other information requested by the commission that the United States environmental protection agency regional administrator might find useful in making the decision whether to issue a waiver.
2. To assist the United States environmental protection agency regional administrator in making the decision whether to grant a waiver of the injection depth requirements, the commission shall submit to the regional administrator documentation of the following:
- a. An evaluation of the following information as it relates to siting, construction, and operation of a geologic sequestration project with a waiver:
 - (1) The integrity of the upper and lower confining units;
 - (2) The suitability of the injection zone (e.g., lateral continuity; lack of transmissive faults and fractures; knowledge of current or planned artificial penetrations into the injection zone or formations below the injection zone);
 - (3) The potential capacity of the geologic formation to sequester carbon dioxide, accounting for the availability of alternative injection sites;
 - (4) All other site characterization data, the proposed emergency and remedial response plan, and a demonstration of financial responsibility;
 - (5) Community needs, demands, and supply from drinking water resources;
 - (6) Planned needs, potential and future use of underground sources of drinking water and nonunderground sources of drinking water in the area;
 - (7) Planned or permitted water, hydrocarbon, or mineral resource exploitation potential of the proposed injection formation and other formations both above and below the injection zone to determine if there are any plans to drill through the formation to access resources in or beneath the proposed injection zone;
 - (8) The proposed plan for securing alternative resources or treating underground sources of drinking water in the event

of contamination related to the carbon dioxide injection well activity; and

(9) Any other applicable considerations or information requested by the commission.

b. A review of the commission's consultation with the state department of health and federally recognized Indian tribes having jurisdiction over lands within the area of review for the injection well for which a waiver is sought.

c. Any written waiver-related information submitted by the state department of health to the commission.

3. The commission shall give public notice that a waiver application has been submitted. The notice must include a map of the area of review and state:

a. The depth of the proposed injection zone:

b. The location of the injection well:

c. The name and depth of all underground sources of drinking water within the area of review;

d. The names of any public water supplies affected, reasonably likely to be affected, or served by underground sources of drinking water in the area of review; and

e. The results of the consultation with the state department of health.

4. Following public notice, the commission shall provide all information received through the waiver application process to the United States environmental protection agency regional administrator.

a. If the regional administrator determines that additional information is required to support a decision, the commission shall request that the applicant for the waiver provide the information.

b. The commission may not issue a waiver without written concurrence from the regional administrator.

5. Upon receipt of the waiver, the storage operator shall comply with:

a. All requirements in sections 43-05-01-5.1, 43-05-01-9.1, 43-05-01-11.1, 43-05-01-11.2, 43-05-01-11.3, 43-05-01-11.5, 43-05-01-13, and 43-05-01-18.

b. All requirements in section 43-05-01-11 with the following modifications:

(1) Injection wells must be constructed and completed to prevent movement of fluids into any unauthorized zones, including underground sources of drinking water.

(2) The casing and cementing program must be designed to prevent the movement of fluids into any unauthorized zones, including underground sources of drinking water in lieu of requirements in section 43-05-01-11.

(3) The surface casing must extend through the base of the nearest underground source of drinking water directly above the injection zone and be cemented to the surface; or, at the commission's discretion, another formation above the injection zone and below the nearest underground source of drinking water above the injection zone.

c. All requirements in section 43-05-01-11.4 with the following modifications:

(1) Ground water quality, geochemical changes, and pressure in the first underground source of drinking water immediately above and below the injection zone, and in any other formations at the discretion of the commission, must be monitored.

(2) Test and monitor to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (e.g., the pressure front) by using direct methods to monitor for pressure changes in the injection zone, and indirect methods (e.g., seismic, electrical, gravity, or electromagnetic surveys or down-hole carbon dioxide detection tools), unless the commission determines based on site-specific geology that such methods are not appropriate.

d. All requirements in section 43-05-01-19 with the following modifications for postinjection site care monitoring requirements:

(1) Ground water quality, geochemical changes and pressure in the first underground source of drinking water immediately above and below the injection zone, and in any other formations at the discretion of the commission, must be monitored.

(2) Test and monitor to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (e.g., the pressure front) by using direct methods in the

injection zone, and indirect methods (e.g., seismic, electrical, gravity, or electromagnetic surveys or down-hole carbon dioxide detection tools), unless the commission determines based on site-specific geology that such methods are not appropriate.

- e. Any additional requirements requested by the commission to ensure protection of underground sources of drinking water above and below the injection zone.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-12. Amendment to carbon dioxide storage facility well permits: Modification, revocation, and reissuance or termination of permits.

1. An amendment to a well permit for a change in injection formation, or modifying the maximum allowable injection rate and pressure, must comply with the provisions of section 43-05-01-05. Permits are subject to review by the commission. Any interested person (i.e., the storage operator, local governments having jurisdiction over land within the area of review, and any person who has suffered or will suffer actual injury or economic damage) may request that the commission review permits issued under this chapter for one of the reasons set forth below. All requests must be in writing and must contain facts or reasons supporting the request. If the commission determines that the request may have merit or at the commission's initiative for one or more of the reasons set forth below, the commission may review the permit. After review, the commission may modify or revoke a permit. Permits may be modified or revoked and reissued when the commission determines one of the following events has occurred:
 - a. Changes to the facility area;
 - b. Injecting into a reservoir not specified in the permit;
 - c. Any increase greater than the permitted carbon dioxide storage volume;
 - d. Changes in the chemical composition of the carbon dioxide stream;
 - e. Area of review reevaluations under subdivision a of subsection 4 of section 43-05-01-05.1;
 - f. Amendment to the testing and monitoring plan under subdivision j of subsection 1 of section 43-05-01-11.4;

- g. Amendment to the injection well plugging plan under subsection 3 of section 43-05-01-11.5;
 - h. Amendment to the postinjection site care and facility closure plan under subsection 3 of section 43-05-01-19;
 - i. Amendment to the emergency and remedial response plan under subsection 4 of section 43-05-01-13;
 - j. Review of monitoring and testing results conducted in accordance with injection well permit requirements;
 - k. The commission receives information that was not available at the time of permit issuance. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance;
 - l. The standards or regulations on which the storage facility permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued;
 - m. The commission determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the storage operator has little or no control and for which there is no reasonably available remedy; or
 - n. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
2. If the commission tentatively decides to modify or revoke and reissue a permit, the commission shall prepare a draft permit incorporating the proposed changes. The commission may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit, the commission shall require the submission of a new permit application.
3. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding, the

storage operator shall comply with all conditions of the existing permit until a new final permit is reissued.

4. Suitability of the storage facility location will not be considered at the time of permit modification or revocation unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.
5. The commission has received notification of a proposed transfer of the storage facility permit.
6. The following are causes for terminating an injection well permit during its term:
 - a. Noncompliance by the storage operator with any permit condition;
 - b. Failure by the storage operator to fully disclose all relevant facts or misrepresentation of relevant facts to the commission; or
 - c. A determination that the permitted activity endangers human health or the environment.
7. If the commission tentatively decides to terminate a permit, the commission shall issue notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under section 43-05-01-07.2.
2. ~~Modifying well construction must comply with section 43-05-01-09.~~

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-12.1. Minor modifications of permits. Upon agreement between the storage operator and the commission, the commission may modify a permit to make the corrections or allowances without the storage operator filing an application to amend a permit. Any permit modification not processed as a minor modification under this section must be filed as an application to amend an existing permit under section 43-05-01-12. Minor modifications may include:

1. Correct typographical errors;
2. Require more frequent monitoring or reporting by the storage operator;
3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than one hundred twenty days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

4. Allow for a change in ownership or operational control of a facility where the commission determines that no other change in the storage facility permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new storage operator has been submitted to the commission pursuant to section 43-05-01-06;
5. Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the commission, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification;
6. Change construction requirements approved by the commission, provided that any such alteration shall comply with the requirements of this chapter and no such changes are physically incorporated into construction of the well prior to approval of the modification by the commission; or
7. Amend the testing and monitoring plan, plugging plan, postinjection site care and facility closure plan, emergency and remedial response plan, worker safety plan, or corrosion monitoring and prevention program where the modifications merely clarify or correct the plan, as determined by the commission.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-13. ~~Storage facility operational safety plans~~ Emergency and remedial response plan. Each ~~The~~ storage operator shall implement the commission-approved ~~storage facility public safety and~~ emergency and remedial response plan and the worker safety plan proposed in section 43-05-01-05. This plan must include emergency response and security procedures. The plan, including revision of the list of contractors and equipment vendors, must be updated as necessary or as the commission requires. Copies of the plans must be available at the storage facility and at the storage operator's nearest operational office.

1. The emergency and remedial response plan requires a description of the actions the storage operator shall take to address movement of the injection or formation fluids that may endanger an underground source of drinking water during construction, operation, and postinjection site care periods. The requirement to maintain and implement a commission-approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The plan must also detail:

- a. The safety procedures concerning the facility and residential, commercial, and public land use within one mile [1.61 kilometers], or any other distance set by the commission, of the outside boundary of the facility area; and
 - b. Contingency plans for addressing carbon dioxide leaks from any well, flow lines, or other facility, and loss of containment from the storage reservoir, and identify specific contractors and equipment vendors capable of providing necessary services and equipment to respond to such leaks or loss of containment.
2. If the storage operator obtains evidence that the injected carbon dioxide stream and associated pressure front may endanger an underground source of drinking water, the storage operator shall:
 - a. Immediately cease injection;
 - b. Take all steps reasonably necessary to identify and characterize any release;
 - c. Notify the commission within twenty-four hours; and
 - d. Implement the emergency and remedial response plan approved by the commission.
3. The commission may allow the operator to resume injection prior to remediation if the storage operator demonstrates that the injection operation will not endanger underground sources of drinking water.
4. The storage operator shall review annually the emergency and remedial response plan developed under subsection 1. Based on this review, the storage operator shall submit to the commission an amended plan or demonstrate to the commission that no amendment to the plan is needed. Any amendments to the plan are subject to the commission's approval, must be incorporated into the storage facility permit, and are subject to the permit modification requirements. Amended plans or demonstrations that amendments are not needed shall be submitted to the commission as follows:
 - a. Within one year of an area of review reevaluation;
 - b. Following any significant changes to the facility, such as addition of injection or monitoring wells, on a schedule determined by the commission; or

c. When required by the commission.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-14. Leak detection and reporting.

1. Leak detectors or other approved leak detection methodologies must be placed at the wellhead of all injection and subsurface observation wells. Leak detectors must be integrated, where applicable, with automated warning systems and must be inspected and tested on a semiannual basis and, if defective, shall be repaired or replaced within ten days. Each repaired or replaced detector must be retested if required by the commission. An extension of time for repair or replacement of a leak detector may be granted upon a showing of good cause by the storage operator. A record of each inspection must include the inspection results, must be maintained by the operator for at least ~~six~~ ten years, and must be made available to the commission upon request.
2. The storage operator ~~must~~ shall immediately report to the commission any leak detected at any well or surface facility.
3. The storage operator ~~must~~ shall immediately report to the commission any pressure changes or other monitoring data from subsurface observation wells that indicate the presence of leaks in the storage reservoir.
4. The storage operator ~~must~~ shall immediately report to the commission any other indication that the storage facility is not containing carbon dioxide, whether the lack of containment concerns the storage reservoir, surface equipment, or any other aspect of the storage facility.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-15. Storage facility corrosion monitoring and prevention requirements. ~~Each~~ The storage operator ~~must~~ shall conduct a corrosion monitoring and prevention program approved by the commission.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-17. Storage facility fees.

1. ~~Each~~ The storage operator shall pay the commission a fee of one cent on each ton of carbon dioxide injected for storage. The fee must be deposited in the carbon dioxide storage facility administrative fund.
2. ~~Each~~ The storage operator shall pay the commission a fee of seven cents on each ton of carbon dioxide injected for storage. The fee must be deposited in the carbon dioxide storage facility trust fund.
3. Moneys from the carbon dioxide storage facility trust fund, including accumulated interest, may be relied upon to satisfy the financial assurance requirements pursuant to section 43-05-01-09.1 for the postclosure period. If sufficient moneys are not available in the carbon dioxide storage facility trust fund at the end of the closure period, the storage operator shall make additional payments into the trust fund to ensure that sufficient funds are available to carry out the required activities on the date at which they may occur. The commission shall take into account project-specific risk assessments, projected timing of activities (e.g., postinjection site care), and interest accumulation in determining whether sufficient funds are available to carry out the required activities.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-18. ~~Quarterly and annual reporting~~ Reporting requirements.

1. The storage operator shall file with the commission all reports, submittals, notifications, and any other information that the commission requires.
2. The storage operator shall give notice to the commission as soon as possible of any planned physical alterations or additions to the permitted storage facility or any other planned changes in the permitted storage facility or activity which may result in noncompliance with permit requirements.
3. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than thirty days following each schedule date.
4. The storage operator shall file with the commission quarterly, or more frequently if the commission requires, a report on the volume of carbon dioxide injected into or withdrawn since the last report, the average injection rate, average composition of the carbon dioxide stream, wellhead and downhole temperature and pressure data or calculations, or other pertinent operational parameters as required by the commission.

5. The storage operator shall submit all required reports, submittals, and notification under chapter 43-05-01 to the United States environmental protection agency in an electronic format approved by that agency.
2. 6. The quarterly report is due thirty days after the end of the quarter. The report must:
 - a. Describe any changes to the physical, chemical, and other relevant characteristics of the carbon dioxide stream from the proposed operating data;
 - b. State the monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure;
 - c. Describe any event that exceeds operating parameters for annulus pressure or injection pressure specified in the permit;
 - d. Describe any event which triggers a shutoff device required pursuant to subsection 5 of section 43-05-01-11.3 and the response taken;
 - e. State the monthly volume and mass of the carbon dioxide stream injected over the reporting period and the volume injected cumulatively over the life of the project to date;
 - f. State the monthly annulus fluid volume added; and
 - g. State the results of monitoring prescribed under section 43-05-01-11.4.
3. 7. The storage operator shall file with the commission an annual report that summarizes the quarterly reports and that provides updated projections of the response and storage capacity of the storage reservoir. The projections must be based on actual reservoir operational experience, including all new geologic data and information. All anomalies in predicted behavior as indicated in permit conditions or in the assumptions upon which the permit was issued must be explained and, if necessary, the permit conditions amended in accordance with section ~~43-05-01-07~~ 43-05-01-12. The annual report is due forty-five days after the end of the year.
8. The storage operator shall report, within thirty days, the results of:
 - a. Periodic tests of mechanical integrity;
 - b. Any well workover; and

- c. Any other test of the injection well conducted by the storage operator if required by the commission.
- 9. The storage operator shall report the following, within twenty-four hours:
 - a. Any evidence that the injected carbon dioxide stream or associated pressure front may cause an endangerment to an underground source of drinking water:
 - b. Any noncompliance which may endanger health and safety of persons or cause pollution of the environment, including:
 - (1) Any monitoring or other information which indicates that any contaminant may cause an endangerment to underground sources of drinking water; or
 - (2) Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between underground sources of drinking water shall be provided verbally within twenty-four hours from the time the storage operator becomes aware of the circumstances. A written submission shall also be provided within five days of the time the storage operator becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
 - c. Any triggering of a shutoff system (e.g., down-hole or at the surface);
 - d. Any failure to maintain mechanical integrity; or
 - e. Any release of carbon dioxide to the atmosphere or biosphere in compliance with the requirement under subdivision h of subsection 1 of section 43-05-01-11.4 for surface air and soil gas monitoring, or other monitoring technologies required by the commission.
- 10. The storage operator shall notify the commission in writing thirty days in advance of:
 - a. Any planned well workover;

- b. Any planned stimulation activities, other than stimulation for formation testing conducted;
 - c. Any other planned test of the injection well conducted by the storage operator; and
 - d. The conversion or abandonment of any well used or proposed to be used in a geologic storage operation.
- 11. The storage operator shall retain the following records until project completion:
 - a. All data collected for the applications of the storage facility permit, injection well permit, and operation of injection well permit;
 - b. Data on the nature and composition of all injected fluids collected pursuant to subdivision a of subsection 1 of section 43-05-01-11.4; and
 - c. All records from the closure period, including well plugging reports, postinjection site care data, and the final assessment.
 - d. Upon project completion, the storage operator shall deliver any records required in this section to the commission.
- 12. The storage operator shall retain the following records for a period of at least ten years from the date of the sample, measurement, or report:
 - a. Monitoring data collected pursuant to subdivisions b through i of subsection 1 of section 43-05-01-11.4; and
 - b. Calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by the storage facility permit.
 - c. This period may be extended by request of the commission at any time.
- 13. The storage operator shall report all instances of noncompliance not otherwise reported under this section, at the time monitoring reports are submitted. The reports shall contain the information listed in subsection 9.
- 14. Where the storage operator becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the commission, such facts or information shall be promptly submitted to the commission. Failure to

do so may result in revocation of the permit, depending on the nature of the information withheld.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-18.1. Abandonment of wells.

1. The removal of injection equipment or the failure to operate an injection well for one year constitutes abandonment of the well. An abandoned well must be plugged in accordance with the plugging plan and its site must be reclaimed.
2. The commission may waive for one year the requirement to plug and reclaim an abandoned well by giving the well temporarily abandoned status. This status may only be given to wells that are to be used for purposes related to the geologic storage of carbon dioxide. If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the commission. The commission may extend a well's temporarily abandoned status beyond one year. A fee of one hundred dollars shall be submitted for each application to extend the temporary abandonment status of any well.
3. In addition to the waiver in subsection 2, the commission may also waive the duty to plug and reclaim an abandoned well for any other good cause found by the commission. If the commission exercises this discretion, the commission shall set a date or circumstance upon which the waiver expires.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-19. Facility Postinjection site care and facility closure. The storage operator shall submit and maintain the postinjection site care and facility closure plan as a part of the storage facility permit application to be approved by the commission. The requirement to maintain and implement a commission-approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

1. ~~Prior to the conclusion of the operational period, and at a time set by the commission, the storage operator must provide an assessment of the operations conducted during the operational period, including the volumes injected, volumes extracted, all chemical analyses conducted, and a summary of all monitoring efforts. The report must also document the stored carbon dioxide's location and characteristics and predict how~~

~~it might move during the closure period.~~ The postinjection site care and facility closure plan must include the following information:

- a. The pressure differential between preinjection and predicted postinjection pressures in the injection zone;
 - b. The predicted position of the carbon dioxide plume and associated pressure front at cessation of injection as demonstrated in the area of review evaluation;
 - c. A description of postinjection monitoring location, methods, and proposed frequency;
 - d. A schedule for submitting postinjection site care monitoring results to the commission; and
 - e. The duration of the postinjection site care monitoring timeframe that ensures nonendangerment of underground sources of drinking water.
2. The storage operator shall ~~submit a monitoring specify in the postinjection site care and facility closure plan for the closure period for approval by the commission, including a proposal specifying which wells will be plugged and which will remain unplugged to be used as subsurface observation wells.~~ Subsurface observation and ground water monitoring wells as approved in the plan must remain in place for continued monitoring during the closure and postclosure periods.
 3. Upon cessation of injection, the storage operator shall either submit an amended postinjection site care and facility closure plan or demonstrate to the commission through monitoring data and modeling results that no amendment to the plan is needed. Any amendments to the postinjection site care and facility closure plan are subject to the commission's approval and must be incorporated into the storage facility permit.
 4. At any time during the life of the geologic sequestration project, the storage operator may modify and resubmit the postinjection site care and facility closure plan for the commission's approval within thirty days of such change.
 - ~~3.~~ 5. Upon cessation of injection, all wells not associated with monitoring must be properly plugged and abandoned in a manner which will not allow movement of injection or formation fluids that endanger underground sources of drinking water in accordance with section 43-05-01-11.5. All storage facility equipment, appurtenances, and structures not associated with monitoring must be removed. Following well plugging and removal of all surface equipment, the surface must

be reclaimed to the commission's specifications that will, in general, return the land as closely as practicable to original condition.

- ~~4.~~ 6. The well casing must be cut off at a depth of five feet [1.52 meters] below the surface and a steel plate welded on top identifying the well name and that it was used for carbon dioxide injection.
- ~~5.~~ 7. The commission shall develop in conjunction with the storage operator a continuing monitoring plan for the postclosure period, including a review and final approval of wells to be plugged.
- ~~6.~~ Upon project closure, all wells designated by the commission must be properly plugged and abandoned; all storage facility equipment, appurtenances, and structures removed; and the project area reclaimed to the commission's specifications that will, in general, return the land as closely as practicable to original condition.
- ~~7.~~ All subsurface observation and ground water monitoring wells as approved in the closure plan must remain in place for continued monitoring during the closure period.
- ~~8.~~ The storage operator shall continue to conduct monitoring during the closure period as specified in the commission-approved postinjection site care and facility closure plan. The storage operator may apply for project completion with an alternative postinjection site care monitoring timeframe pursuant to North Dakota Century Code section 38-22-17. Once it is demonstrated that underground sources of drinking water are no longer endangered, the final assessment under subsection 9 is complete, and upon full compliance with North Dakota Century Code section 38-22-17, the storage operator may apply to the commission for a certificate of project completion. If the storage operator is unable to meet the requirements of North Dakota Century Code section 38-22-17 and is unable to demonstrate that underground sources of drinking water are no longer being endangered, the storage operator shall continue monitoring the storage facility for fifty years or until full compliance is met and such demonstration can be made.
- ~~8.~~ 9. Before the closure period ends and at a time set by the commission project completion, the storage operator shall provide a final assessment of the stored carbon dioxide's location, characteristics, and its future movement and location within the storage reservoir. The storage operator shall submit the final assessment to the commission within ninety days of completing all postinjection site care and facility closure requirements.
 - a. The final assessment must include:
 - (1) The results of computational modeling performed pursuant to delineation of the area of review under section 43-05-01-05.1;

- (2) The predicted timeframe for pressure decline within the injection zone, and any other zones, such that formation fluids may not be forced into any underground sources of drinking water or the timeframe for pressure decline to preinjection pressures;
- (3) The predicted rate of carbon dioxide plume migration within the injection zone and the predicted timeframe for the cessation of migration;
- (4) A description of the site-specific processes that will result in carbon dioxide trapping, including immobilization by capillary trapping, dissolution, and mineralization at the site;
- (5) The predicted rate of carbon dioxide trapping in the immobile capillary phase, dissolved phase, or mineral phase;
- (6) The results of laboratory analyses, research studies, or field or site-specific studies to verify the information required in paragraphs 4 and 5;
- (7) A characterization of the confining zone, including a demonstration that it is free of transmissive faults, fractures, and microfractures, and an evaluation of thickness, permeability, and integrity to impede fluid (e.g., carbon dioxide, formation fluids) movement;
- (8) Any other projects in proximity to the predictive modeling of the final extent of the carbon dioxide plume and area of elevated pressures. The presence of potential conduits for fluid movement, including planned injection wells and project monitoring wells associated with the proposed geologic sequestration project;
- (9) A description of the well construction and an assessment of the quality of plugs of all abandoned wells within the area of review;
- (10) The distance between the injection zone and the nearest underground source of drinking water above and below the injection zone;
- (11) An assessment of the operations conducted during the operational period, including the volumes injected, volumes extracted, all chemical analyses conducted, and a summary of all monitoring efforts. The report must also document the stored carbon dioxide's location and characteristics and predict how it might move during the postclosure period;

- (12) An assessment of the funds in the carbon dioxide storage facility trust fund to ensure that sufficient funds are available to carry out the required activities on the date on which they may occur, taking into account project-specific risk assessments, projected timing of activities (e.g., postinjection site care), and interest accumulation in the trust fund; and
- (13) Any additional site-specific factors required by the commission.

b. Information submitted to support the demonstration in subdivision a must meet the following criteria:

- (1) All analyses and tests for the final assessment must be accurate, reproducible, and performed in accordance with the established quality assurance standards. An approved quality assurance and quality control plan must address all aspects of the final assessment;
- (2) Estimation techniques must be appropriate and test protocols certified by the environmental protection agency must be used where available;
- (3) Predictive models must be appropriate and tailored to the site conditions, composition of the carbon dioxide stream, and injection and site conditions over the life of the geologic sequestration project;
- (4) Predictive models must be calibrated using existing information when sufficient data are available;
- (5) Reasonably conservative values and modeling assumptions must be used and disclosed to the commission whenever values are estimated on the basis of known, historical information instead of site-specific measurements;
- (6) An analysis must be performed to identify and assess aspects of the postinjection monitoring timeframe demonstration that contribute significantly to uncertainty. The storage operator shall conduct sensitivity analyses to determine the effect that significant uncertainty may contribute to the modeling demonstration; and
- (7) Any additional criteria required by the commission.

9: ~~Wells other than those deemed as subsurface observation wells per subsection 2 shall be plugged by the storage operator in accordance with section 43-02-03-34.~~

10. The storage operator shall provide a copy of an accurate plat certified by a registered surveyor which has been submitted to the county recorder's office designated by the commission. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks. The storage operator must also submit a copy of the plat to the United States environmental protection agency regional administrator office.
11. The storage operator shall record a notation on the deed to the property on which the injection well was located, or any other document that is normally examined during title search, that will in perpetuity provide any potential purchaser of the property the following information:
 - a. The fact that land has been used to sequester carbon dioxide:
 - b. The name of the state agency, local authority, or tribe with which the survey plat was filed, as well as the address of the United States environmental protection agency regional office to which it was submitted; and
 - c. The volume of fluid injected, the injection zone or zones into which it was injected, and the period over which injection occurred.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

43-05-01-20. Determining storage amounts.

1. ~~The~~ Upon application by an enhanced oil or gas recovery unit operator or a storage operator, the commission, after notice and hearing, shall issue an order determining the amount of injected carbon dioxide stored in a reservoir that has been or is being used for an enhanced oil or gas recovery project or in a storage reservoir that has been or is being used for storage under a permit issued pursuant to North Dakota Century Code chapter 38-22.
2. ~~Any person applying for a storage amount determination~~ The applicant shall pay a processing fee for a storage amount determination.

~~Processing fee:~~ The applicant shall pay a processing fee based on the commission's actual processing costs, including computer data processing costs, as determined by the commission. The following procedures and criteria will be utilized in establishing the fee:

- a. A record of all application processing costs incurred must be maintained by the commission.

- b. Promptly after receiving an application, the commission shall prepare and submit to the applicant an estimate of the processing fee ~~and a payment billing schedule~~.
- c. After the commission's work on the application has concluded, a final statement will be sent to the applicant. The full processing fee must be paid before the commission issues its decision on the application.
- d. The applicant must pay the processing fee even if the application is denied or withdrawn.

History: Effective April 1, 2010; amended effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 38-22

TITLE 61
STATE BOARD OF PHARMACY

APRIL 2013

CHAPTER 61-13-01

61-13-01-03. Scheduling.

1. The following substances are hereby placed in schedule I of the Controlled Substances Act, North Dakota Century Code section 19-03.1-05, schedule I, subsection 5, hallucinogenic substances:
 - a. CP 47,497 and homologues 2-[(1R,3S)-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol).
 - b. HU-210[(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol)].
 - c. HU-211 (dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol).
 - d. JWH-018 1-Pentyl-3-(1-naphthoyl)indole.
 - e. JWH-073 1-Butyl-3-(1-naphthoyl)indole.
 - f. Cannabinoids, synthetic: it includes the chemicals and chemical groups listed below, including their homologues, salts, isomers, and salts of isomers. The term "isomer" includes the optical, position, and geometric isomers.
 - (1) Naphthoylindoles. Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidiny)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group, whether or not

further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.

- (2) Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.
- (3) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: (5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone - Other names: JWH-307
- (4) Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: E-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane - Other names: JWH-176.
- (5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or

(tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.

- (6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not substituted in the cyclohexyl ring to any extent.
- (7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.
- (8) Tetramethylcyclopropanoylindoles. Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or (tetrahydropyran-4-yl)methyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropanoyl ring to any extent.
- (a) (1-Pentylindol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: UR-144.
- (b) (1-(5-fluoropentyl)indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: XLR-11.
- (c) (1-(2-morpholin-4-ylethyl)-1H-indol-3-yl)-(2,2,3,3-tetramethylcyclopropyl)methanone - Other names: A-796,260.
- (9) Others specifically named:

- (a) 1-[(N-methylpiperidin-2-yl)methyl]-3-(adamant-1-yl)indole - Other names: AM-1248.
- (b) N-Adamantyl-1-pentyl-1H-indole-3-carboxamide - Other names: JWH-018 adamantyl carboxamide.
- (c) N-Adamantyl-1-fluoropentylindole-3-carboxamide - Other names: STS-135.
- (d) N-Adamantyl-1-pentyl-1H-Indazole-3-carboxamide - Other names: AKB 48.
- (e) 1-Pentyl-3-(1-adamantoyl)indole - Other names: AB-001 and JWH-018 adamantyl analog.
- (f) Naphthalen-1-yl-(4-pentyloxynaphthalen-1-yl)methanone - Other names: CB-13.

9. Substituted phenethylamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from phenylethan-2-amine by substitution on the phenyl ring in any of the following ways, that is to say - by substitution with a fused methylenedioxy ring, fused furan ring, or a fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems.

(1) Whether or not the compound is further modified in any of the following ways, that is to say:

- (a) By substitution of phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups, or
- (b) By substitution at the 2-position by any alkyl groups, or
- (c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl, or methoxybenzyl groups.

(2) Examples include:

- (a) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine).

- (b) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine
(also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine).
- (c) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine
(also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine).
- (d) 2-(2,5-Dimethoxyphenyl)ethanamine (also known as 2C-H or 2,5-Dimethoxyphenethylamine).
- (e) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine
(also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine).
- (f) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine
(also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine).
- (g) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine
(also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine).
- (h) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine
(also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine).
- (i) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine
(also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine).
- (j) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine
(also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine).
- (k) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine
(also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine).
- (l) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine (also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine).
- (m) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane
(also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine).
- (n) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine
(also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine).

- (o) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-B-NBOMe; 25B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine).
- (p) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-I-NBOMe; 25I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine).
- (q) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine (also known as Mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine).
- (r) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine (also known as 2C-C-NBOMe; 25C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine).
- (s) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine (also known as 2CB-5-hemiFLY).
- (t) 2-(8-bromo-2,3,6,7-tetrahydrofuro[2,3-f][1]benzofuran-4-yl)ethanamine (also known as 2C-B-FLY).
- (u) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-yl)ethanamine (also known as 2C-B-butterFLY).
- (v) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7-tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane (also known as 2C-B-FLY-NBOMe).
- (w) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine (also known as bromo-benzodifuranyl-isopropylamine or bromo-dragonFLY).
- (x) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine (also known as 2C-I-NBOH or 25I-NBOH).
- (y) 5-(2-Aminopropyl)benzofuran (also known as 5-APB).
- (z) 6-(2-Aminopropyl)benzofuran (also known as 6-APB).
- (aa) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran (also known as 5-APDB).
- (bb) 6-(2-Aminopropyl)-2,3-dihydrobenzofuran (also known as 6-APDB).

- (cc) 2,5-dimethoxy-amphetamine (also known as 2,5-dimethoxy-a-methylphenethylamine; 2, 5-DMA).
- (dd) 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).
- (ee) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (also known as 2C-T-7).
- (ff) 5-methoxy-3,4-methylenedioxy-amphetamine.
- (gg) 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy-a-methylphenethylamine; DOM and STP).
- (hh) 3,4-methylenedioxy amphetamine (also known as MDA).
- (ii) 3,4-methylenedioxymethamphetamine (also known as MDMA).
- (jj) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine. MDE, MDEA).
- (kk) 3,4,5-trimethoxy amphetamine.
- (ll) Mescaline (also known as 3,4,5-trimethoxyphenethylamine).

h. Substituted tryptamines. This includes any compound, unless specifically excepted, specifically named in this schedule, or listed under a different schedule, structurally derived from 2-(1H-indol-3-yl)ethanamine (i.e., tryptamine) by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha-position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups. Examples include:

- (1) 5-methoxy-N,N-diallyltryptamine (also known as 5-MeO-DALT).
- (2) 4-acetoxy-N,N-dimethyltryptamine (also known as 4-AcO-DMT or O-Acetylpsilocin).

- (3) 4-hydroxy-N-methyl-N-ethyltryptamine (also known as 4-HO-MET).
 - (4) 4-hydroxy-N,N-diisopropyltryptamine (also known as 4-HO-DIPT).
 - (5) 5-methoxy-N-methyl-isopropyltryptamine (also known as 5-MeO-MiPT).
 - (6) 5-Methoxy-N,N-Dimethyltryptamine (also known as 5-MeO-DMT).
 - (7) Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N- dimethyltryptamine; mappine).
 - (8) 5-methoxy-N,N-diisopropyltryptamine (also known as 5-MeO-DiPT).
 - (9) Diethyltryptamine (also known as N,N-Diethyltryptamine: DET).
 - (10) Dimethyltryptamine (also known as DMT).
 - (11) Psilocyn.
 - i. 1-[3-(trifluoromethylphenyl)]piperazine (also known as TFMPP).
 - j. 1-[4-(trifluoromethylphenyl)]piperazine.
 - k. 6,7-dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (also known as 5,6-Methylenedioxy-2-aminoindane or MDAI).
 - l. 2-(Ethylamino)-2-(3-methoxyphenyl)cyclohexanone (also known as Methoxetamine or MXE).
2. The following substances are hereby placed in schedule I of the Controlled Substances Act, North Dakota Century Code section 19-03.1-05, schedule I, subsection 7, stimulant substances:
- a. Mephedrone (2-methylamino-1-*p*-tolylpropan-1-one) also known as 4-methylmethcathinone (4-MMC), 4-methylephedrone.
 - b. 3,4-Methylenedioxypropylvalerone (MDPV).
 - c. Substituted cathinones. Any compound, material, mixture, preparation, or other product, unless listed in another schedule or an approved FDA drug (e.g., bupropion, pyrovalerone).

structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

- (1) By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
- (2) By substitution at the 3-position with an acyclic alkyl substituent;
- (3) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups; or
- (4) By inclusion of the 2-amino nitrogen atom in a cyclic structure. Some trade or other names:
 - (a) 3,4-Methylenedioxy-alpha-pyrrolidinopropiophenone (also known as MDPPP).
 - (b) 3,4-Methylenedioxy-N-ethylcathinone (also known as Ethylone, MDEC, or bk-MDEA).
 - (c) 3,4-Methylenedioxy-N-methylcathinone (also known as Methylone or bk-MDMA).
 - (d) 3,4-Methylenedioxypropylvalerone (also known as MDPV).
 - (e) 3,4-Dimethylmethcathinone (also known as 3,4-DMMC).
 - (f) 2-(methylamino)-1-phenylpropan-1-one (also known as Pentadrone).
 - (g) 2-Fluoromethcathinone.
 - (h) 3-Fluoromethcathinone.
 - (i) 4-Methylethcathinone (also known as 4-MEC).
 - (j) 4-Fluoromethcathinone (also known as Flephedrone).
 - (k) 4-Methoxy-alpha-pyrrolidinopropiophenone (also known as MOPPP).

- (l) 4-Methoxymethcathinone (also known as Methedrone: bk-PMMA).
- (m) 4'-Methyl-alpha-pyrrolidinobutiophenone (also known as MPBP).
- (n) Alpha-methylamino-butyrophenone (also known as Buphedrone or MABP).
- (o) Alpha-pyrrolidinobutiophenone (also known as alpha-PBP).
- (p) Alpha-pyrrolidinopropiophenone (also known as alpha-PPP).
- (q) Alpha-pyrrolidinopentiophenone (also known as Alpha-pyrrolidinovalerophenone or alpha-PVP).
- (r) Beta-keto-N-methylbenzodioxolylbutanamine (also known as Butylone or bk-MBDB).
- (s) Ethcathinone (also known as N-Ethylcathinone).
- (t) 4-Methylmethcathinone (also known as Mephedrone or 4-MMC).
- (u) Methcathinone.
- (v) N,N-dimethylcathinone (also known as metamfepramone).
- (w) Naphthylpyrovalerone (also known as naphyrone).

d. Fluoroamphetamine.

e. Fluoromethamphetamine.

History: Effective February 26, 2010; amended effective December 3, 2012.

General Authority: NDCC 19-03.1-02, 19-03.1-05

Law Implemented: NDCC 19-03.1-02

TITLE 63
BOARD OF PODIATRIC MEDICINE

APRIL 2013

CHAPTER 63-01-01

63-01-01-01. Organization and function of board of podiatric medicine.

1. **History.** In 1929 the legislative assembly enacted the Podiatry Practice Act, which is codified as North Dakota Century Code chapter 43-05. The chapter provides for a board of podiatric medicine.
2. **Function.** The function and responsibility of the board is to examine and license qualified applicants for licensure, ensure the continuing qualifications and general educational background of podiatrists, determine discipline for podiatrists who violate general statute or this title, regulate the practice of podiatric medicine in North Dakota, and perform such other duties as may be required by general statute or this title.
3. **Board membership.** The board consists of ~~five~~ six members appointed by the governor. Four of the members are doctors of podiatric medicine. One member is a doctor of medicine. One member is designated as a public member. The board members annually elect by majority vote from the board membership the president, vice president, and secretary-treasurer and such other officers as are established by the board. Members of the board who are doctors of podiatric medicine shall serve four-year terms arranged so that ~~one term expires~~ no more than two terms expire each year.

History: Amended effective October 1, 1982; December 1, 1991; April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02.1, 43-05-03

CHAPTER 63-01-03

63-01-03-01. Inquiries and communications. Any inquiries, communications, or complaints concerning the board of podiatric medicine should be sent to:

~~Secretary-Treasurer~~ Executive Secretary
North Dakota Board of Podiatric Medicine
~~525 North 9th Street~~ 4309 Kodiak Place
Bismarck, ND ~~58501~~ 58503

History: Effective October 1, 1982; amended effective December 1, 1991; April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02.1, 43-05-03, 43-05-08

CHAPTER 63-02-01

63-02-01-01. Application requirements. Every person applying for an annual license to practice podiatric medicine shall submit the following materials not later than thirty days preceding the date of the oral-practical examination or personal appearance:

1. A completed application form provided by the board.
2. A certified copy of a diploma from an approved or recognized school of podiatric medicine, or its equivalent as determined by the board, granted to the applicant by such school.
3. A certified transcript from a recognized or approved school of podiatric medicine which contains the date of graduation, degree granted, and the original seal of the school.
4. Three reference letters regarding the character of the applicant; no more than two from teachers or doctors of podiatric medicine, and none from relatives.
5. An unmounted photograph of approximately three by four inches [7.62 by 10.16 centimeters] of the applicant, taken within one hundred twenty days of the date of the application, and signed across the front by the applicant.
6. An application fee and annual licensing fee.
7. For applicants graduating from and after July 1, 1991, evidence of satisfactory completion of a program of clinical residency. A preceptorship program qualifies as a clinical residency only until January 1, 1995.
8. Evidence of satisfactory completion of the national board of podiatric medical examiners licensing examination as provided herein.
9. The applicant shall provide all information necessary for the board to perform individual state background checks in each state in which the applicant has resided since the applicant's eighteenth birthday.

History: Amended effective October 1, 1982; December 1, 1991; April 1, 2013.

General Authority: NDCC 28-32-02, 43-05-08

Law Implemented: NDCC 43-05-01(2), 43-05-10, 43-05-11, 43-05-12, 43-05-15

CHAPTER 63-02-04

63-02-04-02. Temporary permit.

1. An applicant for a temporary permit to practice podiatric medicine in North Dakota must submit a complete acceptable application for an annual license and pay the required fee for a temporary permit and the application fee. ~~The oral practical examination may be completed during the permit period.~~ The applicant must submit written evidence that the applicant has been accepted as a resident in a clinical residency program and that the clinical residency program meets the standards set forth in this title.
2. A granted temporary permit is valid for the period of clinical residency training ~~and is not to exceed twelve months beginning with the first day of clinical residency training. A temporary permit may be reissued once if the applicant submits acceptable evidence that the clinical residency training was interrupted by circumstances beyond the control of the applicant and that the sponsor of the program agrees to the extension and the applicant pays the temporary permit fee, renewed annually until the clinical residency training requirements are completed, or until such time as the clinical residency training program is terminated or discontinued.~~
3. The temporary permit is automatically revoked if an applicant has engaged in conduct that constitutes grounds for denial of licensure or disciplinary action, discontinues training, or moves out of North Dakota under the procedures of automatic revocation as set forth in North Dakota Century Code section 43-05-16.2.
4. The scope of practice of the temporary permitholder is limited to the performance of podiatric medicine, or as otherwise provided within the structure of the clinical residency program within which the temporary permitholder is enrolled, and is not authorization for independent practice.

History: Effective December 1, 1991; amended effective April 1, 2013.

General Authority: NDCC 43-05-08

Law Implemented: NDCC 43-05-12, 43-05-16.2

CHAPTER 63-02-08

63-02-08-01. Fees. All remittances must be made payable to the North Dakota board of podiatric medicine and must be paid in United States money and are not refundable except as otherwise provided in section 63-02-08-02. The type of fees and amounts are:

1. Application fee	\$150 <u>\$300</u>
2. Application fee based on reciprocity	150 <u>\$300</u>
3. Temporary license fee	150 <u>\$300</u>
4. Delinquent renewal fee	<u>\$25</u>
5. Relicensure fee	150 <u>\$300</u>
6. Annual license fee or annual license renewal fee	<u>\$500</u>
7. Temporary permit fee	<u>\$200</u>
8. Reexamination license fee	<u>\$300</u>
9. Duplicate/replacement fee	<u>\$10</u> for each

History: Effective October 1, 1982; amended effective December 1, 1991; October 18, 1996; April 1, 2013.

General Authority: NDCC 28-32-02, 43-05-08

Law Implemented: NDCC 43-05-08, 43-05-10, 43-05-12, 43-05-13, 43-05-14, 43-05-15

CHAPTER 63-03-02

63-03-02-01. Continuing education requirements. A licensed podiatrist shall at the time of submitting the annual renewal application and as a condition of renewal submit to the board satisfactory evidence of having completed a minimum of ~~twenty~~ sixty hours of study in the continuing education courses approved by the board and completed during the ~~eighteen~~ thirty-six months preceding renewal. If a podiatrist has not been licensed the full thirty-six months preceding renewal, a licensed podiatrist shall submit satisfactory evidence showing completion of a minimum of twenty hours of study in the continuing education courses approved by the board for each calendar year of licensure, not including the year of licensure.

History: Effective October 1, 1982; amended effective December 1, 1991; April 1, 2013.

General Authority: NDCC 28-32-02, 43-05-08

Law Implemented: NDCC 43-05-10, 43-05-11

63-03-02-04. Self-study. A licensed podiatrist may receive ~~a maximum of eight hours of~~ credits of continuing education annually through self-study, including television viewing, video or sound recorded programs, correspondence work, online courses, research, preparation and publication of scholarly works, or by other similar methods. However, the board may request podiatrists using these methods ~~must to~~ receive prior approval of the board by means of a letter specifying the education methods and contents and assurances they are of value to the applicant together with any other information requested by the board.

History: Effective October 1, 1982; amended effective December 1, 1991; April 1, 2013.

General Authority: NDCC 28-32-02, 43-05-08

Law Implemented: NDCC 43-05-08, 43-05-11

**CHAPTER 63-04-01
GENERAL ADMINISTRATION**

Section	
63-04-01-01	Complaint and Reports
63-04-01-02	Preliminary Investigation
63-04-01-03	Administrative Hearing

63-04-01-02. ~~Preliminary investigation~~ Investigation. All complaints alleging or implying violations of North Dakota Century Code chapter 43-05 or this title shall be referred to the ~~board's counsel with instructions to investigate~~ board. Upon receipt of a complaint, the board shall conduct the investigation it deems necessary to determine whether any podiatrist has committed any grounds for disciplinary action provided by law. The board shall also provide a copy of the complaint to the podiatrist that is the subject of the complaint and request a written response from such podiatrist.

1. ~~Upon the initial investigation, the board's counsel will recommend to the board what action, if any, the board shall take. Upon completion of its investigation, the board shall make a finding that the investigation disclosed that:~~
 - a. There is insufficient evidence to warrant further action:
 - b. The conduct of the podiatrist does not warrant further proceedings but the board determines that possible errant conduct occurred that could lead to significant consequences if not corrected. In such a case, the board may take any necessary steps to correct such conduct; or
 - c. The conduct of the podiatrist indicates that the podiatrist may have committed any of the grounds for disciplinary action provided for by law and which warrants further proceedings.
2. ~~Complaints involving minor or routine issues may, at the discretion of the board, be assigned to a member of the board. Typically, such assignment will be a written inquiry, explanation, or warning to the person or persons accused, with copies of all correspondence to the other members. If the board determines that a formal hearing should be held to determine whether any licensed podiatrist has committed any of the grounds for disciplinary action provided for by law, it shall inform the respondent podiatrist of the specific charges to be considered by serving upon that person a copy of a formal complaint filed with the board of podiatric medicine for disposition pursuant to the provisions of North Dakota Century Code chapter 28-32. Any board member that participated in the investigation of the complaint may not participate in any proceeding before the board relating to said complaint. The complaint must be prosecuted before the board by the attorney general or one of the attorney general's assistants.~~

3. If the board finds that there are insufficient facts to warrant further investigation or action, the complaint must be dismissed and the matter is closed. The board shall provide written notice to the individual or entity filing the original complaint and the person who is the subject of the complaint of the board's final action or recommendations, if any, concerning the complaint.
- ~~3.~~ 4. The board may hold a preliminary hearing to determine whether a formal administrative hearing is necessary.
4. ~~5.~~ The board shall ~~cause the board's counsel or secretary-treasurer to~~ immediately serve or send written notice of suspension or revocation to the affected podiatrist for any ex parte suspension or ex parte revocation, allowed by law, that is approved by the board after preliminary investigation.

History: Effective October 1, 1982; amended effective December 1, 1991; April 1, 2013.

General Authority: NDCC 28-32-02, 43-05-08

Law Implemented: NDCC 43-05-08, 43-05-16.2

TITLE 67.1
EDUCATION STANDARDS AND PRACTICES BOARD

APRIL 2013

CHAPTER 67.1-02-03

67.1-02-03-11. Teaching alternative flexibility endorsement.

1. The applicant wishing to apply for the teaching alternative flexibility endorsement must:
 - a. Be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
 - b. Hold a minimum of a minor ~~or~~ minor equivalency, or have no less than two years of documented through the other state educator license, teaching in the course area or field being taught;
 - c. Be a new teacher in the content area or have not taught the content area since January 1, 2002;
 - d. Provide a letter from the school district requesting this endorsement for the applicant and documenting a diligent effort has been made to employ a regularly licensed teacher to fill the position. Documentation of a diligent effort to employ qualified personnel should include information on how and how long the position was advertised, whether schools of education have been contacted in search of applicants, how many qualified applicants applied, how many applicants were interviewed, whether increases in salary or other incentives were offered in an attempt to attract qualified applicants, and whether these incentives are comparable to those offered by other schools of similar size and means;
 - e. Submit a program of study to be completed within three years to become highly qualified; and
 - f. Complete the teaching alternative flexibility endorsement plan form and submit with the seventy-five dollar fee to the education

standards and practices board, 2718 gateway avenue, suite 303,
Bismarck, ND 58503-0585.

If the applicant under this subsection is a special education teacher, the plan of study will need to be completed in two years and the teaching alternative flexibility endorsement will only be renewed once.

2. The applicant will:
 - a. Be provided by the school during the first year intensive supervision or structured mentoring to become highly qualified in the additional subjects; and
 - b. Have three years, or two years if the applicant is a special education teacher, to complete all requirements which includes all content preparation, pedagogy, and field experiences to become highly qualified in all areas of instruction.

The teaching alternative flexibility endorsement will be valid for one year and can be renewed twice, or once if the applicant is a special education teacher, provided the individual demonstrates successful completion of one-third, or one-half if the applicant is a special education teacher, of the total course of study prior to each renewal.

History: Effective April 1, 2006; amended effective July 1, 2008; July 1, 2012.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

CHAPTER 67.1-02-04

67.1-02-04-01. Alternative access licenses for teacher shortages.

Alternative access licenses will be issued under the following conditions:

1. Consideration for alternative access licenses will not be granted until after August first in any year.
2. Alternative access licenses may be issued only in areas where documented shortages of regularly licensed teachers exist as determined by the education standards and practices board. Shortage areas must be determined by the education standards and practices board based upon the ratio of regularly licensed teachers in the state who are qualified for the position to the number of schools with open positions requesting alternative access licensure. In cases where near shortages exist, the board must give additional consideration to whether the hiring school has made a diligent effort to attract and hire regularly licensed teachers.
3. The request for an alternative access license must be initiated by a school. The school board or administration must make the request in writing to the education standards and practices board for consideration of an alternative access license, indicating intent to offer a contract if licensure can be arranged. The request must document that a diligent effort has been made to employ a regularly licensed teacher to fill the position. Documentation of a diligent effort to employ qualified personnel should include information on how and how long the position was advertised, whether schools of education have been contacted in search of applicants, how many qualified applicants applied, how many applicants were interviewed, whether increases in salary or other incentives were offered in an attempt to attract qualified applicants, and whether these incentives are comparable to those offered by other schools of similar size and means.
4. The candidate must write a letter indicating willingness to accept the position if offered and complete all of the application requirements and fees prior to receiving the alternative access license.
5. Complete official transcripts of all college work must be sent to the education standards and practices board.
6. The applicant must have proficiency and hold minimum qualifications of a content area bachelor's degree in the content area to be assigned. ~~If an applicant already qualifies for teacher licensure in another content area, alternative access licensure may not be used to teach in a new content area while obtaining new content area requirements or have~~ no less than two years of documented by the other state education license teaching in the content area to be assigned and have completed the Praxis I, Praxis II PLT, and Praxis II content specific test in the

content area to be assigned. The applicant may apply for the forty-day provisional license prior to submitting the Praxis test score results.

7. Renewal of alternative access licenses will be reviewed each year and will depend upon the supply of and demand for teachers as evidenced by documented efforts to obtain a licensed person for the position. The alternate access license will be issued only once to complete all testing requirements for regular licensure.
8. Renewal of the alternative access license, if permitted, is contingent upon presentation of at least one-third completion of the requirements for regular licensure as stated in section 67.1-02-02-02 and the North Dakota standards for teacher education program.
9. The fee for the alternative access license is one hundred fifty dollars for each year the license is issued.
10. Alternative access licensure is to address documented shortage areas only. Alternative access licensure may not be issued to applicants who have failed to meet the deadlines or conditions of their regular licensure renewal.
11. Initial applicants for alternative access licensure must also submit to the fingerprint background check as stated in subsection 9 of section 67.1-02-02-02.
12. Upon completion of all of the requirements for regular licensure stated in section 67.1-02-02-02, an individual holding an alternative access license may apply for a regular two-year initial license and begin accruing the eighteen months of successful teaching time required to move into the five-year cycle according to sections 67.1-02-02-02 and 67.1-02-02-04.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998-April 14, 1999; June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010; April 1, 2013.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-14

67.1-02-04-02. Interim licenses for substitute teachers. Interim licensure may be granted for substitute teachers who meet the initial requirements as outlined in subsections 1 through 6 and subsection 10 of section 67.1-02-04-01 submit a letter from a school district administrator requesting such license and hold a minimum of two years of postsecondary education (forty-eight semester hours) when a shortage of regularly licensed substitutes exists. If the applicant for the interim substitute license does not hold a bachelor's degree, the applicant may not spend more than ten consecutive days in the same classroom as the substitute teacher. The applicant must complete all of the application requirements and, fees, and submit to the fingerprint background check as stated in subsection 9 of section

~~67.1-02-02-02~~ prior to receiving the interim substitute license. The interim license fee for substitute teachers is forty dollars for one year. Renewal is contingent upon continued request from the school employing the substitute. ~~Individuals who hold an interim substitute licensure and wish to accept a full-time or part-time contract must do so under the reentry requirements in sections 67.1-02-02-04 and 67.1-02-02-09, including reeducation hours.~~ The interim license is valid for a minimum of one year and will expire on the applicant's ~~birthdate~~ birthday.

History: Effective October 16, 1998-April 14, 1999; amended effective June 1, 1999; March 1, 2000; July 1, 2004; April 1, 2006; July 1, 2010; July 1, 2012.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11

67.1-02-04-04. Forty-day provisional licenses. Provisional licenses will be issued for a period of forty days under the following conditions:

1. Consideration for provisional licenses will not be granted until after August fifteenth in any year.
2. Provisional licenses can only be issued to those individuals who have met all of the other requirements for a license except:
 - a. For the final clearance of the bureau of criminal investigation and the federal bureau of investigation;
 - b. Pending the receipt of official transcripts or other original, signed, or certified documents; or
 - c. The awarding of the degree and the official transcripts as documented by the institution of higher education registrar.
 - d. Pending the receipt of the official test scores for the Praxis I or the Praxis II.
3. The school wishing to hire the individual has submitted to the education standards and practices board a letter of need and intent to hire.
4. The individual has submitted the completed application packet and a letter to the education standards and practices board indicating no criminal background and the intent to accept the position.
5. The provisional license is issued for forty days but may be renewed at the discretion of the education standards and practices board and continued request of the school.
6. There is a one-time fee for the provisional license of twenty-five dollars.
7. Once the criminal background investigation has been completed and all official transcripts or other original, signed, or certified documents

received, the education standards and practices board may issue the license for which the individual is qualified with its respective fees and conditions.

History: Effective March 1, 2000; amended effective July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010; July 1, 2012.

General Authority: NDCC 15.1-13-09, 15.1-13-10

Law Implemented: NDCC 15.1-13-10, 15.1-13-11, 15.1-13-13, 15.1-13-14

TITLE 69
PUBLIC SERVICE COMMISSION

APRIL 2013

CHAPTER 69-02-05
EVIDENCE

Section	
69-02-05-01	Rules of Evidence
69-02-05-02	Witnesses
69-02-05-03	Subpoena
69-02-05-04	Depositions, Interrogatories, and Other Discovery [Repealed]
69-02-05-05	Stipulations
69-02-05-06	Documentary Evidence
69-02-05-07	Exhibits
69-02-05-08	Official Notice
69-02-05-09	Former Employees
69-02-05-10	Interrogatories to Parties [Repealed]
69-02-05-11	Ex Parte Communications
<u>69-02-05-12</u>	<u>Interrogatories in Cases Under North Dakota Century Code Title 49</u>

69-02-05-12. Interrogatories in cases under North Dakota Century Code title 49.

Any party to a public utility proceeding under North Dakota Century Code title 49 may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Each interrogatory must be answered separately and fully in writing, unless it is objected to, in which event the objecting party shall state the reasons for the objection and shall answer to the extent the interrogatory is not objectionable. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within ten business days after the service of the interrogatories. A shorter or longer time may be directed by the commission or, in the absence of such direction, agreed to in writing by the parties. Any ground for an objection to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the commission for good cause

shown. A party answering interrogatories shall set out the interrogatory immediately preceding the answer.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49

CHAPTER 69-05.2-05

69-05.2-05-02. Permit applications - General requirements for format and contents.

1. Applications for mining permits must be filed in the format required by the commission. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission.
2. All technical analyses must be planned by or under the direction of an individual qualified in that subject, and data submitted in the permit application shall be accompanied by:
 - a. Names of persons or organizations that collected and analyzed the data.
 - b. Dates of collection and analyses.
 - c. Descriptions of methodology used.
3. The application must provide the name, address, and position of officials of each private or academic research organization or governmental agency consulted in preparing information on land uses, soils, geology, vegetation, fish and wildlife, water quantity and quality, air quality, and archaeological, cultural, and historic features.
4. The commission may alter the application forms for permits, revisions, renewals, bonds, and operation and reclamation plans, and add to or delete from the information required, consistent with North Dakota Century Code chapter 38-14.1 and this article. Operators will be given reasonable advance notice of changes.
5. Maps and plans - general requirements.
 - a. Maps submitted with applications must be presented in a consolidated format, to the extent possible. When appropriate, the types of information found on 1:24,000 scale United States geological survey topographic maps must be included. Permit area map scales must be 1:4,800 or larger. Maps showing lands and water in adjacent areas must be at a scale no smaller than 1:24,000.
 - b. Change in map scales. The commission may approve requests for map scale changes.
6. Applications may be filed in an electronic format acceptable to the commission. All text, tables, spreadsheets, maps, and other

information must be presented in a clear and concise manner and in a format that can be easily viewed using standard computer software. Changes to original and approved narratives must be displayed in an underline-strikethrough format until the application is approved by the commission. Similarly, tables that are revised must be highlighted or otherwise clearly marked to identify all changes. Maps included in an electronic submittal must depict the entire permit area when the scale allows and include the dimensions at which it can be printed, the scale of the map, a scale bar, and north arrow. Details on the map must be legible at the printed size; however, if text is not legible, color coding or other means of identification may be used and represented in the legend. Print size should not exceed forty-eight inches in width. Each electronic document must also include a date stamp or other marking that clearly shows the date the document was last revised.

History: Effective August 1, 1980; amended effective May 1, 1990; April 1, 2013.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-11, 38-14.1-13, 38-14.1-14, 38-14.1-15

69-05.2-05-08. Permit applications - Permit term.

1. A permit will be issued for a fixed term not to exceed five years except as provided in subsection 3. The permit area shall be no larger than a logical pit sequence and include lands used for activities incidental to coal extraction. Coal removal boundaries cannot go beyond those approved for the permit term without obtaining a revision under section 69-05.2-11-02.
2. Permitted acreage where surface coal mining ~~and reclamation~~ operations are not complete shall be successively renewed under section 69-05.2-11-03 until final bond release.
3. A term for a fixed period greater than five years may be approved if:
 - a. The applicant needs a specified longer term and a larger permit area to make the showing necessary to obtain financing for equipment and opening the operation, and this need is verified, in writing, by the applicant's proposed financing source; and
 - b. The application is accurate and complete for the specified longer term.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993; April 1, 2013.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-12

CHAPTER 69-05.2-06

69-05.2-06-01. Permit applications - Identification of interests.

1. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each application must contain:
 - a. The names and addresses of the owner of record of surface and coal subsurface rights contiguous to the permit area extending one-fourth mile [402.33 meters] from the permit boundary.
 - b. The mine name and the mine safety and health administration identification number.
 - c. A statement of all lands, interests in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the permit area extending one-fourth mile [402.33 meters] from the permit boundary.
 - d. The name, address, telephone number, and, as applicable, social security number and employer identification number of the:
 - (1) Applicant.
 - (2) Applicant's resident agent.
 - (3) Person who will pay the abandoned mine land reclamation fee.
 - e. For each person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls", as applicable:
 - (1) The person's name, address, social security number, and employer identification number.
 - (2) The person's ownership or control relationship to the applicant, including percentage of ownership and location in the organizational structure.
 - (3) The title of the person's position, date position was assumed, and, when submitted under subdivision e of subsection 3 of section 69-05.2-10-05, the date of departure from the position.
 - (4) Each additional name and identifying number, including employer identification number, federal or state permit number, and mine safety and health administration number

with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application.

- (5) The application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States.
 - f. For any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls", the operation's:
 - (1) Name, address, identifying numbers, including employer identification number, federal or state permit number and mine safety and health administration number, the date of issuance of the mine safety and health administration number, and the regulatory authority.
 - (2) Ownership or control relationship to the applicant, including percentage of ownership and location in the organizational structure.
2. With regard to the business entity information required by subdivisions d through f of subsection 1:
- a. If this information is already in the applicant violator system maintained by the office of surface mining reclamation and enforcement, the applicant:
 - (1) May certify to the commission by affirming, under oath and in writing, that the relevant information in the applicant violator system is accurate, complete, and up to date; or
 - (2) If the part of the information in the applicant violator system is missing or incorrect, submit the necessary information or corrections and affirm, under oath and in writing, that the information submitted is accurate and complete.
 - b. The applicant shall affirm, under oath and in writing, that all business entity information provided in an application is accurate and complete.
 - c. The commission may establish a central file to house the applicant's business entity identity information, rather than place duplicate information in each permit file. If a central file is established for an applicant, the information in that file will be

considered a component of each permit it is connected to. The commission will make information in a central file available to the public and the applicant shall file a copy with the county auditor in the county where mining is proposed.

- d. After notification that the application is deemed ready for approval but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subdivisions d through f of subsection 1 or certify that information in the applicant violator system is still accurate, complete, and up to date.
3. The applicant shall submit information required by this section in any format prescribed by the office of surface mining reclamation and enforcement.
4. The submission of a social security number in subdivisions d and e of subsection 1 is voluntary.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; July 1, 1995; April 1, 2013.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

69-05.2-06-02. Permit applications - Compliance information. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each application must contain:

1. A statement of any current or previous coal mining permits in any state held during the five years prior to application and by any person identified in paragraph 3 of subdivision e of subsection 1 of North Dakota Century Code section 38-14.1-14, and of any pending application to conduct operations in any state. The information must be listed by permit and pending application number for each.
2. The explanation required by subdivision h of subsection 1 of North Dakota Century Code section 38-14.1-14 including:
 - a. Identification number and permit issue date or date and amount of bond or similar security.
 - b. Identification of the authority that suspended or revoked a permit or forfeited a bond and the reasons for that action.
 - c. The current status of the permit, bond, or security.
 - d. The date, location, type, and current status of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture.

3. A list of all violation notices as required by subdivision g of subsection 1 of North Dakota Century Code section 38-14.1-14 including violations received by any person who owns or controls the applicant.
4. A list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant.
5. The lists required by subsections 3 and 4 must include, as applicable:
 - a. Any identifying numbers for the operation, including the federal or state permit number and mine safety and health administration number, the date of issuance of the violation notice and mine safety and health administration number, the name of the person to whom the violation was issued, and the identity of the issuing authority, department, or agency.
 - b. A brief description of the violation alleged.
 - c. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by the applicant or by any person who owns or controls the applicant, to obtain administrative or judicial review.
 - d. The current status of the proceedings and violation notice.
 - e. Any actions taken by the applicant or by any person who owns or controls the applicant to abate the violation.
 - f. Any final resolution of each notice.
6. With regard to the violation information required by subsections 3 through 5:
 - a. If this information is already in the applicant violator system maintained by the office of surface mining reclamation and enforcement, the applicant:
 - (1) May certify to the commission by affirming, under oath and in writing, that the relevant information in the applicant violator system is accurate, complete, and up to date; or
 - (2) If the part of the information in the applicant violator system is missing or incorrect, submit the necessary information or corrections and affirm, under oath and in writing, that the information you submit is accurate and complete.

- b. The applicant shall affirm, under oath and in writing, that all violation information provided in an application is accurate and complete.
- c. The commission may establish a central file to house the applicant's identity information, rather than place duplicate information in each permit file. If a central file is established for an applicant, the information in that file will be considered a component of each permit it is connected to. The commission will make information in a central file available to the public and the applicant shall file a copy with the county auditor in the county where mining is proposed.
- ~~6.~~ d. After notification that the application is deemed ready for approval but before the permit is issued, the applicant shall, as applicable, update, correct, or indicate that no change has occurred in the information previously submitted under subsections 3 through 5 or certify that information in the applicant violator system is still accurate, complete, and up to date.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; April 1, 2013.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-14

CHAPTER 69-05.2-10
PERMIT APPLICATIONS - REVIEW, PUBLIC PARTICIPATION, AND
APPROVAL OR DISAPPROVAL

Section

69-05.2-10-01	Permit Applications - Public Notices of Filing <u>and Entering Data Into the Applicant Violator System</u>
69-05.2-10-02	Permit Applications - Informal Conferences
69-05.2-10-03	Permit Applications - Criteria for Permit Approval or Denial
69-05.2-10-04	Permit Applications - Criteria for Permit Approval or Denial - Existing Structures
69-05.2-10-05	Permit Applications - Approval or Denial Actions
69-05.2-10-06	Permit Applications - Permit Approval for Surface Disturbances Over Federal Mineral Estates
<u>69-05.2-10-07</u>	<u>Permit Applications - Challenges to Ownership or Control Listings and Findings</u>
<u>69-05.2-10-08</u>	<u>Permit Applications - Commission Actions Related to Ownership and Control Information After Permit Issuance</u>
<u>69-05.2-10-09</u>	<u>Permit Applications - Ownership and Control Requirements for Permittees After Permit Issuance</u>

69-05.2-10-01. Permit applications - Public notices of filing and entering data into the applicant violator system.

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
 - a. The applicant's name and business address.
 - b. A map or description which must:
 - (1) Clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the permit area.
 - (2) Clearly show or describe the exact location and boundaries of the permit area.
 - (3) Show the north point (if a map).
 - (4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or conduct activities that may impact future coal recovery, the names of each owner of record of coal rights within the permit boundaries.

- c. The address of the commission, to whom written comments, objections, or requests for informal conferences on the application may be submitted.
 - d. If an applicant seeks a permit to conduct operations within one hundred feet [30.48 meters] of the outside right of way of a public road or to relocate a public road, a concise statement describing the road, the particular part to be relocated, where the relocation is to occur, and its duration.
2. The commission will distribute appropriate portions of the application to the state advisory committee specified in subsection 2 of North Dakota Century Code section 38-14.1-21 formed to aid the commission in evaluating the operations and reclamation plan. Members of the committee shall forward their evaluation to the commission within forty-five days of receipt.
3. If the application contains prime farmlands to be mined, the commission will furnish the state conservationist of the natural resource conservation service with the prime farmland reclamation plan submitted under section 69-05.2-09-15. The state conservationist shall provide review and comment on the proposed method of soil reconstruction and suggest remedial revisions if the plan is considered inadequate.
4. The applicant shall make a copy of the complete application available for the public to inspect and copy by filing it with the county auditor in the county where the mining is proposed. The applicant shall file the copy by the first date of the newspaper advertisement and any subsequent changes at the same time they are submitted to the commission.
5. In addition to the requirements of subsection 3 of section 38-14.1-18 of the North Dakota Century Code, the commission will notify all federal or state government agencies with authority to issue permits and licenses applicable to the proposed operations as part of the permit coordinating process and those with an interest in the proposed operations. These agencies include the soil conservation district office, the local United States army corps of engineers district engineer, the national park service, and the United States fish and wildlife service.
6. The commission will provide notice and opportunity for hearing for persons seeking and opposing disclosure prior to declaring any permit information confidential. Notice will be published in the official county newspaper of the county where the proposed operations will be located at least fifteen days prior to the hearing. Information requested to be held confidential must be clearly identified by the applicant and submitted separately. Confidential information is limited to:

- a. Analysis of the chemical and physical properties of the coal to be mined, except information on coal components potentially toxic in the environment.
 - b. The nature and location of archaeological resources on public land and Indian land as required by the Archaeological Resources Protection Act of 1979.
7. Upon deeming an application complete, the commission will:
- a. Enter into the applicant violator system maintained by the office of surface mining reclamation and enforcement the business entity information that the applicant is required to submit under section 69-05.2-06-01 and information required by section 69-05.2-06-02 pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired. The applicant violator system, or AVS, is the automated information system of applicant, permittee, operator, violation and related data that the office of surface mining reclamation and enforcement maintains to assist in implementing the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.].
 - b. Update the information referred to in subdivision a in AVS upon verifying any additional information submitted or discovered during the review of the permit application.
8. The commission will rely upon the information that the applicant submits under section 69-05.2-06-01, information from AVS, and any other available information, to review the applicant's and operator's organizational structure and ownership or control relationships. This review will be conducted before a permit eligibility determination is made in accordance with subsections 1 through 5 of section 69-05.2-10-03.
9. The commission will rely upon the information that the applicant submits under section 69-05.2-06-01, information from AVS, and any other available information to review the applicant's and operator's permit histories and previous mining experiences. The commission will also determine if the applicant and operator have previous mining experience. If the applicant or operator does not have any previous mining experience, the commission may conduct additional reviews to determine if someone else with mining experience controls the mining operation. These reviews will be conducted before a permit eligibility determination is made in accordance with subsections 1 through 5 of section 69-05.2-10-03.
10. The commission will rely upon the information that the applicant submits under section 69-05.2-06-02, a report from AVS, and any other available information to review histories of compliance for

the applicant, any person who owns or controls the applicant, the operator, or operations owned or controlled by the operator, in regard to violations of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201, et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation. This review will be conducted before a permit eligibility determination is made in accordance with subsections 1 through 5 of section 69-05.2-10-03.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; April 1, 2007; April 1, 2013.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-18

69-05.2-10-03. Permit applications - Criteria for permit approval or denial.

1. The commission will not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is currently in violation of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation, or if any of the following are outstanding:
 - a. Delinquent civil penalties under North Dakota Century Code sections 38-12.1-08 and 38-14.1-32, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any law or rule in any state enacted under federal law or regulation pertaining to air or water environmental protection, incurred in connection with any surface coal mining and reclamation operation.
 - b. Bond forfeitures where violations upon which the forfeitures were based have not been corrected.
 - c. Delinquent abandoned mine reclamation fees.
 - d. Unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining and reclamation operation.
 - e. Unresolved federal and state failure-to-abate cessation orders.

- f. Unresolved imminent harm cessation orders.
2. If a current violation exists, the commission will require the applicant or person who owns or controls the applicant, before the permit is issued, to:
 - a. Submit proof that the violation has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation; or
 - b. Establish that the applicant, or any person owned or controlled by either the applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation. If the administrative or judicial authority either denies a stay applied for in the appeal or affirms the violation, then any operations being conducted under a permit issued under this section must immediately cease, until the provisions of subdivision a are satisfied.
3. Any permit issued on the basis of proof submitted under subdivision a of subsection 2 that a violation is being corrected, or pending the outcome of an appeal under subdivision b of subsection 2, will be conditionally issued.
4. The commission will not issue a permit if it finds the applicant, anyone who owns or controls the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of any law or rule of this state, the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.], or any state or federal program approved under the Surface Mining Control and Reclamation Act of 1977, of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with those laws, rules, or programs. The applicant, anyone who owns or controls the applicant, or the operator must be given an opportunity for hearing on the determination under North Dakota Century Code section 38-14.1-30.
5. After an application is deemed ready for approval, but before the permit is issued, the commission's decision to approve or disapprove the application will be made, based on the compliance review required by subsection 1, in light of any new information submitted under subsection 2 of section 69-05.2-06-01 and subsection 6 of section 69-05.2-06-02. After that information is submitted, the commission will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect the applicant's permit eligibility under subsections 1 through 4. This report will be requested no more than five business days before the permit is issued by the commission. If the commission then determines that the

applicant is not eligible for a permit, written notification of the decision will be sent to the applicant explaining the reasons and the appeal rights that are available under North Dakota Century Code section 38-14.1-30.

6. In addition to the requirements of subsection 3 of North Dakota Century Code section 38-14.1-21, no permit or significant revision will be approved, unless the application affirmatively demonstrates and the commission finds, in writing, on the basis of information in the application or otherwise available, which is documented in the approval and made available to the applicant, that:
 - a. The permit area is not on any lands subject to the prohibitions or limitations of North Dakota Century Code section 38-14.1-07 or the area has met the application review procedures of section 69-05.2-04-01.1.
 - b. For alluvial valley floors:
 - (1) The applicant has obtained either a negative determination; or
 - (2) If the permit area or adjacent area contains an alluvial valley floor:
 - (a) The operations would be conducted according to chapter 69-05.2-25 and all applicable requirements of North Dakota Century Code chapter 38-14.1.
 - (b) Any change in the use of the lands covered by the permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.
 - (3) The significance of the impact of the operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the commission as suitable for site-specific protection of agricultural activities in alluvial valley floors.
 - (4) Criteria for determining whether a mining operation will materially damage the quantity or quality of waters include:
 - (a) Potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor to levels above the threshold value at which crop yields decrease, based on crop salt tolerance research

studies approved by the commission, unless the applicant demonstrates compliance with subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21.

- (b) The increases in subparagraph a will not be allowed unless the applicant demonstrates, through testing related to local crop production that the operations will not decrease crop yields.
 - (c) For types of vegetation specified by the commission and not listed in approved crop tolerance research studies, a consideration must be made of any observed correlation between total dissolved solids concentrations in water and crop yield declines.
 - (d) Potential increases in the average depth to water saturated zones (during the growing season) within the root zone that would reduce the amount of subirrigated land compared to premining conditions.
 - (e) Potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions.
 - (f) Potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased root zone saturation.
- (5) For the purposes of this subsection, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage [hectarage] and boundaries in existence prior to July 1, 1979, or, if established after July 1, 1979, with boundaries based on enhancement of the farm's agricultural productivity not related to mining operations.
- (6) If the commission determines the statutory exclusions of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply and that any of the findings required by this section cannot be made, the commission may, at the applicant's request:
- (a) Determine that mining is precluded and deny the permit without the applicant filing any additional information required by this section; or
 - (b) Prohibit surface coal mining and reclamation operations in all or part of the area to be affected by mining.

- c. The applicant has, with respect to prime farmland, obtained either a negative determination or if the permit area contains prime farmlands:
 - (1) The postmining land use will be cropland.
 - (2) The permit specifically incorporates the plan submitted under section 69-05.2-09-15 after consideration of any revisions suggested by the natural resource conservation service.
 - (3) The operations will be conducted in compliance with chapter 69-05.2-26 and other standards required by this article and North Dakota Century Code chapter 38-14.1.
 - (4) The permit demonstrates that the applicant has the technological capability to restore prime farmland, within a reasonable time, to equivalent or higher yields as nonmined prime farmland in the surrounding area under equivalent management practices.
 - (5) The aggregate total prime farmland acreage will not be decreased from that which existed prior to mining based on the cooperative soil survey. Any postmining water bodies that are part of the reclamation must be located within the nonprime farmland portions of the permit area. If any such water bodies reduce the amount of prime farmland that a surface owner had before mining, the affected surface owners must consent to the creation of the water bodies and the plans must be approved by the commission.
 - d. The operations will not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats.
 - e. The applicant has submitted proof that all reclamation fees required by 30 CFR subchapter R have been paid.
 - f. The applicant has, if applicable, satisfied the requirements for approval of a cropland postmining land use under section 69-05.2-22-01.
7. The commission may make necessary changes in the permit to avoid adverse effects on finding that operations may adversely affect any publicly owned park or places included on the state historic sites registry or the national register of historic places. Operations that may adversely affect those parks or historic sites will not be approved

unless the federal, state, or local governmental agency with jurisdiction over the park or site agrees, in writing, that mining may be allowed.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; June 1, 1994; July 1, 1995; June 1, 1997; May 1, 2001; January 1, 2009; April 1, 2013.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-33

69-05.2-10-07. Permit applications - Challenges to ownership or control listings and findings.

1. A person may challenge a listing or finding of ownership or control using the procedures detailed below if that person is:
 - a. Listed in a permit application or in AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof:
 - b. Found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under section 69-05.2-10-08 or 69-05.2-32-01; or
 - c. An applicant or permittee affected by an ownership and control listing or finding.
2. In order to challenge an ownership and control listing or finding, a written explanation must be submitted to the regulatory authority regarding the basis of the challenge along with any evidence or explanatory materials outlined in subsection 7. If the challenge concerns a pending permit application, the written explanation must be submitted to the regulatory authority with jurisdiction over the application. If the challenge concerns the applicant's ownership and control of a surface coal mining operation and the person is not currently seeking a permit, the written explanation must be submitted to the regulatory authority with jurisdiction over the surface coal mining operation.
3. When a challenge concerns a violation under the jurisdiction of a different regulatory authority, the commission will consult the regulatory authority with jurisdiction over the violation and the AVS office to obtain additional information.
4. If the commission is responsible for deciding a challenge under this section, it may request an investigation by the AVS office.
5. At any time a person listed in AVS as an owner or controller of a surface coal mining operation may request an informal explanation from the AVS office as to the reason it is shown in the AVS in an ownership or control capacity.

6. When a challenge is made to a listing of ownership and control, or a finding of ownership and control, the challenger shall prove by a preponderance of the evidence that the challenger either:
 - a. Does not own or control the entire operation or relevant portion or aspect thereof; or
 - b. Did not own or control the entire operation or relevant portion or aspect during the relevant time period.

7. In order to meet the burden of proof in subsection 6, the challenger shall present reliable, credible, and substantial evidence and any explanatory materials to the regulatory authority. A request to hold materials submitted under this section as a trade secret may be made to the commission following the procedures of chapter 69-02-09. Acceptable materials include:
 - a. Notarized affidavits containing specific facts concerning the duties that were performed for the relevant operation, the beginning and ending dates pertaining to ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation in question.
 - b. Certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records.
 - c. Certified copies of documents filed with or issued by any state, municipal, or federal government agency.
 - d. An opinion of counsel, when supported by evidentiary materials, a statement by counsel that counsel is qualified to render the opinion, and a statement that counsel has personally and diligently investigated the facts of the matter.

8. Within sixty days of receipt of an ownership and control listing or finding challenge, the commission will review and investigate the evidence and explanatory materials submitted and any other reasonable available information bearing on the challenge and issue a written decision. The decision will state whether the challenger owns or controls the relevant surface coal mining operation, or owned or controlled the operation during the relevant time period. Decisions regarding the challenge will be promptly provided to the challenger by certified mail, return receipt requested. Service of the decision will be complete upon delivery and is not incomplete if acceptance of delivery is refused. Appeals of the written decision must be made by requesting a formal hearing under North Dakota Century Code section 38-14.1-30. The commission will also post all decisions in AVS.

9. Following the commission's written decision, or any formal hearing decision or court reviewing such decision, the commission will review the information in AVS to determine if it is consistent with the decision. If it is not, the commission will promptly inform the office of surface mining reclamation and enforcement and request that the AVS information be revised to reflect the decision.

History: Effective April 1, 2013.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

69-05.2-10-08. Permit applications - Commission actions related to ownership and control information after permit issuance.

1. For the purposes of future permit eligibility determinations and enforcement actions, the commission will enter the following data into AVS:
 - a. Permit records will be entered within thirty days after issuing a permit or subsequent changes.
 - b. Unabated or uncorrected violations will be entered within thirty days after the abatement period expires for any violation.
 - c. Any changes to the information required under section 69-05.2-06-01 will be entered within thirty days after receiving notice of a change.
 - d. A change in status of violations listed in AVS will be entered within thirty days after abatement, correction, or termination of a violation, or an administrative or judicial decision affecting a violation.
2. If, at any time, it is discovered that any person owns or controls an operation with an unabated or uncorrected violation, the commission will determine whether enforcement action is appropriate under North Dakota Century Code section 38-14.1-28. The commission will enter the results of each enforcement action, including administrative and judicial decisions, into AVS.
3. The commission will serve a preliminary finding of permanent permit ineligibility under subdivision c of subsection 1 of North Dakota Century Code section 38-14.1-28 on the applicant or operator if the criteria in subdivisions a and b are met. In making a finding under this subsection, the commission will only consider control relationships and violations which would make, or would have made, the applicant or operator ineligible for a permit under subsection 4 of section 69-05.2-10-03. A preliminary finding of permanent permit ineligibility will be made if it found that:

- a. The applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under subdivision c of subsection 1 of North Dakota Century Code section 38-14.1-28; and
- b. The violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with North Dakota Century Code chapter 38-14.1, this chapter, or the approved permit.
4. The permittee or operator may request a hearing on a preliminary finding of permanent permit ineligibility under North Dakota Century Code section 38-14.1-30.
5. If a hearing is not requested and the time for seeking a hearing has expired, the commission will enter the finding into AVS. If a hearing is requested, the commission will enter the finding into AVS only if that finding is upheld on appeal.
6. At any time, the commission may identify any person who owns or controls an entire operation or any relevant portion or aspect thereof. If such a person is identified, the commission will issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The commission's written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.
7. After the commission issues a written preliminary finding under subsection 6, the commission will allow the person subject to the preliminary finding thirty days in which to submit any information tending to demonstrate the lack of ownership or control. If after reviewing any information that is submitted, the commission is persuaded that the person is not an owner or controller, a written notice will be served to that effect. If, after reviewing any information that is submitted, the commission still finds that the person is an owner or controller, or no information is submitted within the thirty-day period, the commission will issue a written finding and enter that finding into AVS.
8. If the commission identifies a person as an owner or controller under subsection 7, that finding may be challenged using the provisions under section 69-05.2-10-07.

History: Effective April 1, 2013.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

69-05.2-10-09. Permit applications - Ownership and control requirements for permittees after permit issuance.

1. Within thirty days of being issued a cessation order under subdivision b of subsection 1 of North Dakota Century Code section 38-14.1-28, the permittee must provide or update all the information required under section 69-05.2-06-01.
2. A permittee does not have to submit information under subsection 1 if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.
3. Within sixty days of any addition, departure, or change in position of any person identified in subdivision e of subsection 1 of section 69-05.2-06-01, the permittee must provide:
 - a. The date of any departure; and
 - b. A certification, under oath, from the natural person with the greatest level of effective control over the entire proposed surface coal mining operation that the person controls the proposed surface coal mining operation.

History: Effective April 1, 2013.

General Authority: NDCC 38-14.1-03

Law Implemented: NDCC 38-14.1-21, 38-14.1-22, 38-14.1-23

ARTICLE 69-06

ENERGY CONVERSION AND TRANSMISSION FACILITY SITING

Chapter	
69-06-01	General Provisions
69-06-02	Utility Reporting Requirements
69-06-02.1	Requests for Jurisdictional Determination
69-06-03	Letter of Intent
69-06-04	Certificate of Site or Corridor Compatibility
69-06-05	Transmission Facility Permit
69-06-06	Waiver of Procedures and Time Schedules
69-06-07	Emergency Certificate or Permit [Repealed]
69-06-08	Criteria
69-06-09	Continuing Suitability of Certificate or Permit
<u>69-06-10</u>	<u>Small Wind Energy Conversion Facilities</u>

CHAPTER 69-06-01 GENERAL PROVISIONS

Section	
69-06-01-01	Definitions
69-06-01-02	Procedure for Public Hearings
69-06-01-03	Advisory Committees
69-06-01-04	Applications <u>Application</u>
69-06-01-05	Designated State Agencies and Officers
69-06-01-06	Siting Fee Refund

69-06-01-01. Definitions. The terms used throughout this article have the same meanings as in North Dakota Century Code chapter 49-22, and in addition:

1. "Act" means the North Dakota Energy Conversion and Transmission Facility Siting Act, North Dakota Century Code chapter 49-22.
2. "Avoidance criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes unless it is shown that under the circumstances there are no reasonable alternatives.
3. "Criteria" means policy statements that guide and govern the preparation of the inventory of exclusion and avoidance areas, and the energy conversion facility site and transmission facility corridor and route suitability evaluation process.
4. "Designated corridor" means a corridor for which a certificate has been issued by the commission.
5. "Designated route" means a route for which a permit has been issued by the commission.

6. "Designated site" means a site for which a certificate has been issued by the commission.
7. "Extractive resources" means natural resources that are removed during the construction of a facility, including sand, gravel, soil, rock, and other similar materials.
- ~~7.~~ 8. "Exclusion criteria" means criteria that remove areas from consideration for energy conversion facility sites and transmission facility routes.
9. "Height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.
- ~~8.~~ 10. "Historical resource" means a district, site, building, structure, or other object which possesses significance in history, archaeology, paleontology, or architecture, or has other cultural value to the state or local community.
- ~~9.~~ 11. "Party aggrieved" means a person who will be affected in a manner different from the effect on the general public.
- ~~10.~~ 12. "Policy criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to maximize benefits during the construction and operation of a facility.
- ~~11.~~ 13. "Refinement" means the action or process of purifying.
- ~~12.~~ 14. "Selection criteria" means criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to minimize adverse human and environmental impact after the exclusion and avoidance criteria have been applied.
- ~~13.~~ 15. "Siting rules" means this article adopted by the commission pursuant to North Dakota Century Code chapter 49-22.
- ~~14.~~ 16. "Wetland" means an aquatic area important to the life stages of certain wildlife species as defined by the United States fish and wildlife service.

History: Amended effective August 1, 1979; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-01, 49-22-03, 49-22-05.1, 49-22-07, 49-22-08, 49-22-08.1, 49-22-19

69-06-01-02. Procedure for public hearings.

1. **General Rulemaking hearings.** A general public hearing shall consistent with the rulemaking provisions of North Dakota Century Code chapter 28-32 must be held prior to the adoption, amendment,

~~or repeal of, or a substantial or material modification to, the criteria, a substantial or material modification or addition to these rules, and the revocation or suspension of a certificate or permit a rule.~~

2. **Revocation or suspension hearings.** A public hearing consistent with the complaint provisions of North Dakota Century Code chapter 28-32 must be held on the revocation or suspension of a certificate or permit. Notice of ~~a general~~ the public hearing shall must be given by the commission ~~at least twenty days prior to the hearing~~ by publication in the official newspaper of the county where the hearing will be held; and in the official newspaper of all counties in which any part of an affected facility is located, ~~and if it is a hearing on the adoption of, or a substantial or material modification or addition to, the criteria or these rules, in all of the state daily newspapers.~~

~~2.~~ 3. **Application hearings.** One or more public hearings shall must be held on an application for a certificate or a permit in each county in which any part of the site, corridor, or route is proposed to be located; provided, that the commission ~~by order~~ may consolidate the county hearings. The notice of a hearing on an application for a certificate of corridor compatibility for a transmission facility shall must include a map ~~of the appropriate county~~ depicting the proposed corridor and study area. The notice of a hearing on an application for a route permit shall must include a map ~~of the appropriate county~~ depicting the ~~designated~~ corridor and the location of the proposed route and any proposed alternative routes. ~~The maps shall be of a size, style, and legend as specified by the commission.~~ Notice of each hearing shall must be given by the commission at least twenty days prior to the hearing, as follows:

a. By publication in the official newspaper of each county in which any part of the site, corridor, or route is proposed to be located, whether the hearings are consolidated or not, and in such other newspapers that the commission may determine to be appropriate.

b. By mail or electronic mail to the following persons in each county in which any part of the site, corridor, or route is proposed to be located:

(1) The chairman of the board of county commissioners.

(2) The county auditor.

(3) The chief executive officer of each city in the county on an application for a certificate for an energy conversion facility.

(4) The chief executive officer of each city within a corridor on an application for a certificate or permit for a transmission facility.

- c. By mail or electronic mail to any state or federal agency ~~authorized to issue a permit required for the construction or operation of the facility listed in section 69-06-01-05.~~
- d. By mail or electronic mail to all parties.
- e. By mail or electronic mail to the state senators and representatives of each legislative district in which any part of the site, corridor, or route is proposed to be located.
- f. ~~By publication as provided in subdivision a on each city in the county outside of the proposed corridor.~~

3. ~~4.~~ **Transfer and waiver hearings.** The commission, upon determination that an application for the transfer of a certificate or permit or an application for a waiver of procedures and time schedules is complete, shall publish a notice of opportunity for a public hearing, or upon its own motion shall publish a notice of hearing, once in the official newspaper of each county in which any part of the site, corridor, or route is located or proposed to be located. A public hearing ~~shall~~ must be held on an application if, either within twenty days following the publication of a notice of opportunity any interested person requests and demonstrates good cause for a public hearing, or the commission determines upon its own motion that there is good cause for a public hearing. Notice of a public hearing ~~shall~~ must be given by the commission at least twenty days prior to the hearing by publication in the official newspaper of each county in which the site, corridor, or route is located or proposed to be located.

History: Amended effective August 1, 1979; January 1, 1982; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-13

69-06-01-03. Advisory committees.

1. **Public representatives.** Persons appointed to an advisory committee to advise and assist the commission in the evaluation of a site or corridor who are to serve as representatives of a city or a county shall be deemed to be the public representatives on that committee.
2. **Meetings.** Committee meetings ~~shall~~ must be scheduled at the discretion of the commission. All meetings of an advisory committee ~~shall~~ must be open to the public, and public notice shall be given of the time and place of each meeting. All committee meetings ~~shall~~ must be conducted in an informal manner by the commission or its representative, and members of the public and the applicant shall be afforded a reasonable opportunity to participate in the proceedings.

3. **Term.** All members of an advisory committee ~~shall~~ serve at the pleasure of the commission.

History: Amended effective April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-14

69-06-01-04. ~~Applications~~ Application.

1. **Time.** The time in which the commission is required to act in response to an application ~~shall~~ does not commence until the commission notifies the applicant in writing that the application is complete.
2. **Complete application.** An application for a certificate or permit ~~shall~~ will be deemed complete when the commission determines the application contains sufficient information and supporting documentation to enable the commission to process the application.

History: Amended effective April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-01-05. Designated ~~state~~ agencies and officers. The following are the designated state agencies and officers entitled to notice when so referred to in this article:

1. Aeronautics commission.
2. Attorney general.
3. Department of agriculture.
4. ~~Department~~ State department of health.
5. Department of human services.
6. ~~Department of labor~~ Labor department.
7. Department of career and technical education.
8. ~~Economic development commission~~ Department of commerce.
9. Energy development impact office.
10. Game and fish department.
11. ~~Geological survey~~ Industrial commission.
12. Governor.

13. ~~Highway department~~ Department of transportation.
14. State historical society of North Dakota.
15. Indian affairs commission.
16. Job service North Dakota.
17. ~~Land department~~ Department of trust lands.
18. Parks and recreation department.
19. ~~Division of community services – department of commerce.~~
- ~~20.~~ 19. Soil conservation committee.
- ~~24.~~ 20. State water commission.
21. United States department of defense.
22. United States fish and wildlife service.
23. United States army corps of engineers.
24. Federal aviation administration.
25. The county commission of the county or counties where the project is located.
26. North Dakota transmission authority.
27. North Dakota pipeline authority.

History: Effective August 1, 1979; amended effective July 1, 2008; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-01-06. Siting fee refund. After all siting permits and certificates are issued by the commission and after all notice and hearing costs and expenses are paid, the commission will refund to the applicant all of the application fee paid by the applicant except five thousand dollars or the amount of the fee remaining if that amount is less than five thousand dollars. When construction and all postconstruction inspections are complete and when the commission has determined that any required tree mitigation is satisfactory, any remaining balance

of the application fee will be refunded to the applicant. No refunds for less than fifty dollars will be processed.

History: Effective July 1, 2008.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-22

CHAPTER 69-06-02
UTILITY REPORTING REQUIREMENTS

Section

69-06-02-01 Ten-Year Plan

69-06-02-02 Filing

69-06-02-01. Ten-year plan. A ten-year plan ~~shall~~ must contain the information specified by the commission.

History: Amended effective April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-04

69-06-02-02. Filing.

1. Ten copies of each ~~report shall~~ plan must be filed with the commission, and one copy of each ~~report shall~~ plan must be filed with the county auditor of each county in which any part of a site or corridor is proposed to be located.

2. Notice of the filing of each ~~report shall~~ plan must be given by the utility to each ~~state~~ agency and officer entitled to notice as designated in section 69-06-01-05.

History: Amended effective August 1, 1979; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-04

CHAPTER 69-06-03

69-06-03-01. Filing. Any utility planning to construct an energy conversion or transmission facility shall file a letter of intent with the commission ~~at least one year prior to the filing of an application for a certificate unless a shorter period is requested in writing and approved by the commission.~~

History: Amended effective April 1, 2011; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-07.1

69-06-03-02. Contents. A letter of intent must contain the following:

1. A description of the size and type of facility, and the area to be served.
2. A map of the study area for the proposed site or corridor.
3. The anticipated construction and operation schedule.
4. An estimate of the total cost of construction which will be used to determine the filing fee that must accompany the application.

History: Amended effective April 1, 2011; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-07.1

CHAPTER 69-06-04
CERTIFICATE OF SITE ~~OR~~ CORRIDOR COMPATIBILITY

Section

69-06-04-01

Application

69-06-04-02

Designation of Sites ~~and Corridors~~

69-06-04-01. Application.

1. **Form.** ~~All applications shall be in such form as the commission may prescribe.~~ An application must be reproduced and bound to eight and one-half-inch by eleven-inch size. Accompanying maps must be folded to eight and one-half inches by eleven inches with the title block appearing in the lower right-hand corner.

2. **Contents.** The application must contain:
 - a. A description of:
 - (1) The type of energy conversion facility proposed;
 - (2) The gross design capacity;
 - (3) The net design capacity;
 - (4) The estimated thermal efficiency of the energy conversion process and the assumptions upon which the estimate is based;
 - (5) The number of acres that the proposed facility will occupy; and
 - (6) The anticipated time schedule for:
 - (a) Obtaining the certificate of site compatibility;
 - (b) Completing land acquisition;
 - (c) Starting construction;
 - (d) Completing construction;
 - (e) Testing operations;
 - (f) Commencing commercial production; and
 - (g) Beginning any expansions or additions.

- b. Copies of any evaluative studies or assessments of the environmental impact of the proposed facility submitted to any federal, regional, state, or local agency.
- c. An analysis of the need for the proposed facility based on present and projected demand for the product or products to be produced by the proposed facility, including the most recent system studies supporting the analysis of the need.
- d. A description of any feasible alternative methods of serving the need.
- e. A study area that includes the proposed facility site, of sufficient size to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09.
- f. A discussion of the utility's policies and commitments to limit the environmental impact of its facilities, including copies of board resolutions and management directives.
- g. A map identifying the criteria that provides the basis for the specific location of the proposed facility within the study area.
- h. A discussion of the criteria evaluated within the study area, including exclusion areas, avoidance areas, selection criteria, policy criteria, design and construction limitations, and economic considerations.
- i. A discussion of the mitigative measures that the applicant will take to minimize adverse impacts which result from the location, construction, and operation of the proposed facility.
- j. The qualifications of each person involved in the facility site location study.
- k. A map of the study area showing the location of the proposed facility and the criteria evaluated.
- l. An eight and one-half-inch by eleven-inch black and white map suitable for newspaper publication depicting the site area.
- m. A discussion of present and future natural resource development in the area.
- n. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission.

Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by commission staff. Data must include appropriate attribute data for the included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross sections, and reports must be submitted in the portable document file (PDF). If the supporting documents were derived from GID/Cad files, the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated word files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography, and the type of the imagery, color bands, i.e., black and white, color, color infrared, and any other pertinent data. All GIS base map data must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, north and/or south zones US survey feet (NAD 83), UTM zone 13N or 14N meters (NAD 83), or geographic coordinate system (WGS 84) meters. The vertical datum must be the North American vertical datum of 1988. Tabular data (i.e., laboratory analytical data, water level evaluation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc.) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format. The application may be submitted to the commission on the following media:

Compact disc (CD-ROM (CD-R)), digital versatile disc (DVD-R or DVD+R), or other media upon commission approval.

- 2- 3. **Filing.** The applicant shall file an original and ten copies of an application with the commission.
- 3- 4. **Notice of filing.** The commission shall serve a notice of filing of a complete application on the following:
 - a. The chairman of the board of county commissioners and the auditor of each county in which any part of the site or corridor is proposed to be located.
 - b. The chief executive officer of each city in a county in which any part of an energy conversion facility is proposed to be located.
 - c. The chief executive officer of each city within a proposed corridor site for a transmission facility.

- d. The ~~state~~ agencies and officers entitled to notice as designated in section 69-06-01-05.
 - e. The state senators and representatives of each legislative district in which any part of the site ~~or corridor~~ is proposed to be located.
4. ~~5.~~ **Amendment of application.** The commission may allow an applicant to amend its application, consistent with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code article 69-02, at any time during the pendency of an application. A rehearing may be required if the commission determines that a proposed amendment, which is received after the hearing process has been completed, materially changes the authority sought.
5. ~~6.~~ **Reapplication.** When a certificate is denied and the commission specifies a modification that would make it acceptable, the applicant may reapply. In a reapplication:
- a. The reapplication ~~shall~~ must be heard ~~in the same manner as an original application~~ as specified in section 69-06-01-02.
 - b. The utility shall indicate its acceptance or rejection of the suggested modification.
 - c. If a suggested modification is rejected by the applicant, it shall propose an alternative modification.
 - d. ~~No initial~~ Include a filing fee shall be required and any additional fees as specified in North Dakota Century Code chapter 49-22.
 - ~~e.~~ ~~Further additional fees may be required.~~
 - f. ~~e.~~ Reapplication must be made within six months of the order denying an application.

History: Amended effective August 1, 1979; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08, 49-22-08.1

69-06-04-02. Designation of sites ~~and corridors.~~

1. **Requirements of order.** An order approving the issuance of a certificate ~~shall~~ must contain findings that the application, with modifications, if any, meets the site or corridor evaluation process requirements of the Act, ~~and any special conditions the commission may require.~~
- ~~a.~~

2. Modifications or special conditions.

- (1) a. Any modifications or special conditions required by the commission ~~shall be~~ are deemed to be accepted unless the applicant petitions for a rehearing.
- (2) b. If the applicant rejects any modifications or special conditions and proposes alternatives which it would accept, such a proposal shall be treated by the commission as an amendment to the application.
- (3) c. If the applicant rejects any modifications or special conditions without either requesting a rehearing or proposing alternatives, the commission shall rescind its order and deny the application.
- ~~b.~~ ~~The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless otherwise determined by the commission.~~
- ~~c.~~ ~~An order denying the issuance of a certificate shall contain findings that state:~~
 - (1) ~~The reason for such denial.~~
 - (2) ~~What modification in the application would make it acceptable or that there is no modification that would be acceptable based upon the record before the commission.~~

~~2.~~ 3. **Issuance of a certificate.** When a site ~~or~~ corridor is approved, the commission shall issue a certificate in accordance with the order ~~which shall:~~

- ~~a.~~ ~~Describe the authority granted.~~
- ~~b.~~ ~~Contain any special conditions that the commission may require.~~

History: Amended effective April 1, 2011; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08

**CHAPTER 69-06-05
TRANSMISSION FACILITY PERMIT**

Section

69-06-05-01

Application

69-06-05-02

Designation of Corridor and Route

69-06-05-01. Application.

1. **Form.** ~~All applications shall be in such form as the commission may prescribe.~~ An application must be reproduced and bound to eight and one-half-inch by eleven-inch size. Accompanying maps must be folded to eight and one-half inches by eleven inches with the title block appearing in the lower right-hand corner.

2. **Contents.** The application must contain:
 - a. A description of the following:
 - (1) The type of facility proposed.
 - (2) The purpose of the facility.
 - (3) The technology to be deployed.
 - (4) The type of product to be transmitted.
 - (5) The source of the product to be transmitted.
 - (6) The final destination of the product to be transmitted.
 - (7) The proposed size and design and any alternate size or design that was considered, including:
 - (a) The width of right of way;
 - (b) The approximate length of facility;
 - (c) The estimated span length for electric facilities;
 - (d) The anticipated type of structure for electric facilities;
 - (e) The voltage for electric facilities;
 - (f) The requirement for and general location of any new associated facilities;
 - (g) The estimated distance between surface structures for pipeline facilities;

- (h) The pipe size for pipeline facilities;
 - (i) The maximum design operating pressure and temperature for pipeline facilities;
 - (j) The maximum design flow rate for pipeline facilities; and
 - (k) The number and general location of compressor or pumping stations.
 - b. The anticipated time schedule for accomplishing major events, including:
 - (1) Obtaining the certification of corridor compatibility;
 - (2) Obtaining the route permit;
 - (3) Completing right-of-way acquisition;
 - (4) Starting construction;
 - (5) Completing construction;
 - (6) Testing operations; and
 - (7) Commencing operations.
 - c. A copy of each evaluative study or assessment of the environmental impact of the proposed facility submitted to the agencies listed in section 69-06-01-05 and each response received.
 - d. An analysis of the need for the proposed facility based on present and projected demand for the product transmitted, including the most recent system studies supporting the analysis of the need.
 - e. A description of any feasible alternative methods for serving the need
 - f. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless another appropriate width is determined by the commission.
 - g. A study area that includes a proposed corridor of sufficient width to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09.

- h. A discussion of the factors in North Dakota Century Code section 49-22-09 to aid the commission's evaluation of the proposed route.
- i. A discussion of the applicant's policies and commitments to limit the environmental impact of its facilities, including copies of board resolutions and management directives.
- j. Identification and map of the criteria that led to the proposed route location within the designated corridor, including exclusion areas, avoidance areas, selection criteria, policy criteria, design construction limitations, and economic considerations.
- k. A discussion of the relative value of each criteria and how the applicant selected the proposed corridor location, giving consideration to all criteria and how the location, construction, and operation of the facility will affect each criteria.
- l. A discussion of the general mitigative measures that the applicant will take to minimize adverse impacts that result from a route location in the proposed corridor and the construction and operation of the facility.
- m. The qualifications of each person involved in the corridor location study.
- n. A map identifying the criteria that led to the proposed route location within the designated corridor and the location of any new associated facilities. Several different criteria may be shown on each map depending on the map scale and the density and nature of the criteria.
- o. An eight and one-half-inch by eleven-inch black and white map suitable for newspaper publication depicting the site area.
- p. A discussion of present and future natural resource development in the area.
- q. Map and GIS requirements. The applicant shall provide information that is complete, current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the commission. Data must be submitted in the ESRI shapefile or geodatabase format. If the applicant cannot submit the data in the ESRI format, an alternate format may be submitted with written approval by commission staff. Data must include appropriate attribute data for the included features. Relevant and complete metadata in compliance with FGDC metadata standards must be provided with all files. Supporting documents such as base maps, figures, cross sections, and

reports must be submitted in the portable document file (PDF). If the supporting documents were derived from GIS/Cad files the supporting GIS/Cad files must also be included in the submittal. Aerial photos (raster images) must be georeferenced and submitted in TIFF, GEOTIFF, or MrSID image file formats with the associated word files. Appropriate metadata must be provided with all files, such as the source for the raster images, dates of aerial photography, and the type of imagery, color bands, i.e., black and white, color, color infrared, and any other pertinent data. All GIS base map data must be referenced to a published geographic or projected coordinate system. The appropriate systems would be North Dakota coordinate system of 1983, north and/or south zones US survey feet (NAD 83), UTM zone 13N or 14N meters (NAD 83), or geographic coordinate system (WGS 84) meters. The vertical datum must be the North American vertical datum of 1988. Tabular data (i.e., laboratory analytical data, water level evaluation data, monitor well construction data, well and boring X and Y location data, grain size analysis data, hydraulic conductivity data, etc.) must be submitted in either a Microsoft Excel or Microsoft Access database format or both if both are used. Textural data may be submitted in Microsoft Word or PDF format. The application may be submitted to the commission on the following media:

Compact disc (CD-ROM (CD-R)), digital versatile disc (DVD-R or DVD+R), or other media upon commission approval.

2. ~~3.~~ **Filing.** The applicant shall file an original and ten copies of an application with the commission.
3. ~~4.~~ **Service.** The applicant shall serve one copy of a complete application on the county auditor in each county in which any part of the designated corridor is located.
4. ~~5.~~ **Notice of filing.** The commission shall serve a notice of the filing of a complete application on the following:
 - a. The chief executive officer of each city within the designated corridor.
 - b. The ~~state~~ agencies and officers entitled to notice as designated in section 69-06-01-05.
 - c. The chairman of the board of county commissioners of each county in which any part of the designated corridor is located.

- d. The state senators and representatives of each legislative district in which any part of the designated corridor is located.

History: Amended effective August 1, 1979; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

69-06-05-02. Designation of corridor and route.

1. **Issuance of a permit.** An order approving the issuance of a permit ~~shall~~ must:
 - a. Describe the authority granted.
 - b. Contain any special conditions that the commission may require.
 - c. Specify any required modifications in the type, design, routing, right-of-way preparation, or construction of the facility.
 - d. Contain findings that the application, with modifications, if any, meets the corridor evaluation process requirements of the Act, and any special conditions the commission may require.
2. **Issuance of a certificate.** When a corridor is approved, the commission shall issue a certificate in accordance with the order.
- ~~2.~~ 3. **Deviations.** A The commission may permit a deviation from the designated route may be permitted before or during construction if the deviation does not violate any of the exclusion and avoidance area criteria of this article. After construction is complete a deviation is governed by North Dakota Century Code section 49-22-03.
- ~~3.~~ 4. **Variance from permit conditions.** The commission may allow a variance from any special condition upon a request ~~which demonstrates~~ demonstrating the existence of good cause.
5. **Corridor width.** The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless otherwise determined by the commission.

History: Amended effective August 1, 1979; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-08.1

CHAPTER 69-06-06

69-06-06-01. Application. ~~All applications shall~~ An application must be in such the form as prescribed by the commission may prescribe.

4. **Form:**

~~2.~~ 1. **Filing.** The applicant shall file an original and ten copies of an application with the commission.

2. **Contents.** The application must contain:

- a. A description of the type of facility addressed in the application, including the purpose and the technology to be employed.
- b. A description of the products to be produced or transmitted by the proposed facility.
- c. The capacity and design of the proposed facility.
- d. The location of the proposed facility and a map showing the location of the proposed facility.
- e. A description of the general area to be served by the facility.
- f. The anticipated time schedule for major events.
- g. Any plans for future expansion of the proposed facility.
- h. The need for the proposed facility based on the present and projected demand for the product or products to be produced by the proposed facility, including the most recent system studies supporting the analysis of the need.
- i. Any reasonable alternative methods of serving the need.
- j. Justification for any deviations from the applicant's most recent ten-year plan that the proposed facility may present.
- k. The estimated total cost of construction of the facility.
- l. Any specific provisions of law that the applicant requests the commission waive or modify, with a separate justification for each provision.
- m. The factual basis demonstrating that the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects.

- n. The nature of the emergency justifying immediate authority, if the application is based on an emergency situation.

History: Amended effective April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-07.2

69-06-06-02. Order. An order approving or denying all or part of a request shall must contain findings ~~in support of such approval or denial~~ supporting the decision and shall must specifically describe the procedures and time schedules that are waived.

1. ~~Requirements of order.~~
2. ~~Time requirement.~~ The commission shall issue its order in response to an application containing a request for waiver within three months of the filing of a complete application.
3. ~~Extension of time.~~ Upon a showing of just cause or upon its own motion, the commission may extend the time within which it is required to act in response to an application containing a request for waiver.

History: Amended effective April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-07.2

CHAPTER 69-06-08

69-06-08-01. Energy conversion facility siting criteria. The following criteria shall must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process.

1. **Exclusion areas.** The following geographical areas shall must be excluded in the consideration of a site for an energy conversion facility, ~~and shall include a buffer zone of a reasonable width to protect the integrity of the area. Natural screening may be considered in determining the width of the buffer zone.~~
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: parks; forests; forest management lands; historic sites; monuments; historical markers; archaeological sites; grasslands; wild, scenic, or recreational rivers; game refuges; game management areas; management areas; and nature preserves.
 - c. County parks and recreational areas; municipal parks; parks owned or administered by other governmental subdivisions; hardwood draws; and enrolled woodlands.
 - d. Prime farmland and unique farmland, as defined by the land inventory and monitoring division of the soil conservation service, United States department of agriculture, in 7 C.F.R. part 657; provided, however, that if the commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, ~~such this exclusion shall does~~ not apply.
 - e. Irrigated land.
 - f. Areas critical to the life stages of threatened or endangered animal or plant species.
 - g. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - h. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.

2. Additional exclusion areas for wind energy conversion facilities.
The following geographical areas must be excluded in the consideration of a site for a wind energy conversion facility:

a. Areas less than:

- (1) One and one-tenth times the height of the turbine from interstate or state roadway right of way;**
- (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway;**
- (3) One and one-tenth times the height of the turbine from any railroad right of way;**
- (4) One and one-tenth times the height of the turbine from a one hundred fifteen kilovolt or higher transmission line; and**
- (5) One and one-tenth times the height of the turbine from the property line of a nonparticipating landowner, unless a variance is granted. A variance may be granted if an authorized representative or agent of the permittee and affected parties with associated wind rights file a written agreement expressing all parties' support for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in North Dakota Century Code chapter 17-04.**

~~2.~~ **3. Avoidance areas.** The following geographical areas ~~shall~~ may not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. Economic considerations alone ~~shall~~ will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area ~~shall~~ must be included. Natural screening may be considered in determining the width of the buffer zone.

- a. Historical resources which are not designated as exclusion areas.
- b. Areas within the city limits of a city or the boundaries of a military installation.

- c. Areas within known floodplains as defined by the geographical boundaries of the hundred-year flood.
- d. Areas that are geologically unstable.
- e. Woodlands and wetlands.
- f. Areas of recreational significance which are not designated as exclusion areas.

4. Additional avoidance areas for wind energy conversion facilities.

A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.

~~3.~~ **5. Selection criteria.** A site ~~shall~~ may be approved in an area only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:

- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner demonstrates has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - (5) The agricultural quality of the cropland.
- b. The impact upon the availability and adequacy of:
 - (1) Law enforcement.
 - (2) School systems and education programs.
 - (3) Governmental services and facilities.
 - (4) General and mental health care facilities.

- (5) Recreational programs and facilities.
- (6) Transportation facilities and networks.
- (7) Retail service facilities.
- (8) Utility services.

c. The impact upon:

- (1) Local institutions.
- (2) Noise-sensitive land uses.
- (3) Rural residences and businesses.
- (4) Aquifers.
- (5) Human health and safety.
- (6) Animal health and safety.
- (7) Plant life.
- (8) Temporary and permanent housing.
- (9) Temporary and permanent skilled and unskilled labor.

d. The cumulative effects of the location of the facility in relation to existing and planned facilities and other industrial development.

~~4.~~ 6. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:

- a. Recycling of the conversion byproducts and effluents.
- b. Energy conservation through location, process, and design.
- c. Training and utilization of available labor in this state for the general and specialized skills required.
- d. Use of a primary energy source or raw material located within the state.

- e. ~~Nonrelocation of~~ Not relocating residents.
- f. The dedication of an area adjacent to the facility to land uses such as recreation, agriculture, or wildlife management.
- g. Economies of construction and operation.
- h. Secondary uses of appropriate associated facilities for recreation and the enhancement of wildlife.
- i. Use of citizen coordinating committees.
- j. A commitment of a portion of the energy produced for use in this state.
- k. Labor relations.
- l. The coordination of facilities.
- m. Monitoring of impacts.

History: Amended effective August 1, 1979; July 1, 2006; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

69-06-08-02. Transmission facility corridor and route criteria. The following criteria ~~shall~~ must guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process. Exclusion and avoidance areas may be located within a corridor, but at no given point ~~shall~~ may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

1. **Exclusion areas.** The following geographical areas ~~shall~~ must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area ~~shall~~ must be included. Natural screening may be considered in determining the width of the buffer zone.
 - a. Designated or registered national: parks; memorial parks; historic sites and landmarks; natural landmarks; monuments; and wilderness areas.
 - b. Designated or registered state: parks; historic sites; monuments; historical markers; archaeological sites; and nature preserves.
 - c. County parks and recreational areas; municipal parks; and parks owned or administered by other governmental subdivisions.

- d. Areas critical to the life stages of threatened or endangered animal or plant species.
 - e. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.
 - f. Areas within one thousand two hundred feet of the geographic center of an intercontinental ballistic missile (ICBM) launch or launch control facility.
 - g. Areas within thirty feet on either side of a direct line between intercontinental ballistic missile (ICBM) launch or launch control facilities to avoid microwave interference.
2. **Avoidance areas.** The following geographical areas ~~shall~~ may not be considered in the routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an avoidance area should be designated for a facility, the commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative routes. Economic considerations alone ~~shall~~ will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area ~~shall~~ will be included unless a distance is specified in the criteria. Natural screening may be considered in determining the width of the buffer zone.
- a. Designated or registered national: historic districts; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands.
 - b. Designated or registered state: wild, scenic, or recreational rivers; game refuges; game management areas; management areas; forests; forest management lands; and grasslands.
 - c. Historical resources which are not specifically designated as exclusion or avoidance areas.
 - d. Areas which are geologically unstable.
 - e. Within five hundred feet [152.4 meters] of a residence, school, or place of business. This criterion shall not apply to a water pipeline transmission facility.
 - f. Reservoirs and municipal water supplies.
 - g. Water sources for organized rural water districts.

- h. Irrigated land. This criterion shall not apply to an underground transmission facility.
 - i. Areas of recreational significance which are not designated as exclusion areas.
3. **Selection criteria.** A corridor or route shall be designated only when it is demonstrated to the commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:
- a. The impact upon agriculture:
 - (1) Agricultural production.
 - (2) Family farms and ranches.
 - (3) Land which the owner can demonstrate has soil, topography, drainage, and an available water supply that cause the land to be economically suitable for irrigation.
 - (4) Surface drainage patterns and ground water flow patterns.
 - b. The impact upon:
 - (1) ~~Noise-sensitive~~ Sound-sensitive land uses.
 - (2) The visual effect on the adjacent area.
 - (3) Extractive and storage resources.
 - (4) Wetlands, woodlands, and wooded areas.
 - (5) Radio and television reception, and other communication or electronic control facilities.
 - (6) Human health and safety.
 - (7) Animal health and safety.
 - (8) Plant life.
4. **Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference

to an applicant that will maximize interstate benefits. The benefits to be considered include:

- a. Location and design.
- b. Training and utilization of available labor in this state for the general and specialized skills required.
- c. Economies of construction and operation.
- d. Use of citizen coordinating committees.
- e. A commitment of a portion of the transmitted product for use in this state.
- f. Labor relations.
- g. The coordination of facilities.
- h. Monitoring of impacts.
- i. Utilization of existing and proposed rights of way and corridors.
- j. Other existing or proposed transmission facilities.

History: Amended effective August 1, 1979; January 1, 1982; February 1, 1995; July 1, 2006; April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-05.1

CHAPTER 69-06-10
SMALL WIND ENERGY CONVERSION FACILITIES

Section

<u>69-06-10-01</u>	<u>Application</u>
<u>69-06-10-02</u>	<u>Exemption</u>
<u>69-06-10-03</u>	<u>Contents</u>
<u>69-06-10-04</u>	<u>Hearing</u>

69-06-10-01. Application. Except as provided in section 69-06-10-02, an application for a certificate of site compatibility for a wind energy conversion facility designed for or capable of generating no more than twenty megawatts of electricity may file an application under this chapter.

History: Effective April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-17

69-06-10-02. Exemption. This chapter does not apply to a wind energy conversion facility with outer boundaries that are adjacent to or within one mile of the outer boundaries of another wind energy conversion facility.

History: Effective April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-17

69-06-10-03. Contents. The application must be accompanied by:

1. An application fee as required under North Dakota Century Code section 49-22-22.
2. All supporting documentation regarding exclusion and avoidance areas.
3. Written certification that the applicant will follow all siting laws and rules.
4. Written certification that the proposed facility will not affect any known exclusion areas. If the proposed energy conversion facility will not affect any known avoidance areas, written certification that the proposed facility will not affect any known avoidance areas.
5. If a proposed energy conversion facility will affect a known avoidance area, written notice that the proposed facility will affect a known avoidance area and information on the specific avoidance area expected to be impacted and the reasons why the impact cannot be avoided.
6. Written certification that the applicant will comply with the applicable tree and shrub mitigation specifications and any other representations

and covenants contained in the applicable certification relating to order provisions.

History: Effective April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-17

69-06-10-04. Hearing. Upon a determination that an application is complete, the commission may issue a notice of filing and notice of opportunity to comment or request for hearing. The notice must be served in the manner provided in section 69-06-01-02 and published once in the official county newspaper of the county in which the facility is to be located. The notice must be served and published at least twenty days before the date by which interested persons may comment or request a hearing on the application. The commission may order a hearing on the application by its own motion.

History: Effective April 1, 2013.

General Authority: NDCC 49-22-18

Law Implemented: NDCC 49-22-17

CHAPTER 69-09-02
STANDARDS OF SERVICE - ELECTRIC

Section	
69-09-02-01	Rates and Regulations to be Filed
69-09-02-02	Information Available to Customers [Superseded]
69-09-02-02.1	Information to Customers
69-09-02-03	Service Connections
69-09-02-04	Deposits and Guarantees
69-09-02-05	Discontinuance of Service [Superseded]
69-09-02-05.1	Discontinuance of Electric Service
69-09-02-06	Continuity of Service
69-09-02-07	Extension of Service
69-09-02-08	Temporary Service
69-09-02-09	Customer Complaints
69-09-02-10	Meter Readings
69-09-02-11	Billing
69-09-02-12	Adjustment of Bill for Meter Errors
69-09-02-13	Refunds and Deficiency Billings
69-09-02-14	Classification of Service
69-09-02-15	Resale and Submetering
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69-09-02-17	Standard Frequency
69-09-02-18	Standard Voltage and Allowable Variation
69-09-02-19	Voltage Measurement and Voltage Records
69-09-02-20	Accuracy of Portable Indicating Instruments
69-09-02-21	Accuracy of Watt-Hour Meters
69-09-02-22	Accuracy of Demand Meters
69-09-02-23	Multipliers and Test Constants
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69-09-02-28	Meter Records
69-09-02-29	Location of Meters
69-09-02-30	Public Interest
69-09-02-31	Cooperation
69-09-02-32	Advance Notice
69-09-02-33	Principle of Least Cost
69-09-02-34	Location of Lines
69-09-02-35	Installation and Maintenance - Conformance to National Electrical Safety Code
69-09-02-36	Raising and Lowering Electric Supply and Communication Lines
69-09-02-37	Electric Master Metering Prohibited - Exception [<u>Repealed</u>]
69-09-02-38	Advertising by Electric Utilities
69-09-02-39	Automatic Adjustment Clauses

69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code. The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the ~~2007~~ 2012 edition of the National Electrical Safety Code, ~~issued August 1, 2006,~~ which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective September 1, 1984; January 1, 1988; December 1, 1990; August 1, 1993; July 1, 1997; March 1, 2003; July 1, 2008; April 1, 2013.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-20-02

69-09-02-37. Electric master metering prohibited - Exception. Repealed effective April 1, 2013.

- ~~1. Applicability. This section is applicable to any new or substantially remodeled commercial or residential building containing more than one unit or any other multiple use facility in which the occupant of each unit has control over a portion of the electric energy used in the building or facility. This section is applicable to those buildings or facilities on which construction or substantial remodeling is commenced on or after November 1, 1980. This section is not applicable to hotels, motels, dormitories, nursing homes, homes for the elderly, or similar facilities, or to low income rental housing in which the cost of electricity is included in the rent and where the amount of the rental payment is based upon the tenant's ability to pay.~~
- ~~2. Master metering of electric service in new or substantially remodeled buildings is prohibited, except to the extent determined appropriate by the commission pursuant to subsection 3.~~
- ~~3. An owner or builder of a new or substantially remodeled building may petition the commission for approval of master metering of electric service. The commission may approve the petition if the owner or builder affirmatively demonstrates to the satisfaction of the commission that the costs of purchasing and installing separate meters in such building exceed the longrun benefits of separate metering to the customers in such building.~~

History: Effective October 1, 1980.

General Authority: NDCC 49-02-11

Law Implemented: NDCC 49-02-11

TITLE 96
BOARD OF CLINICAL LABORATORY PRACTICE

APRIL 2013

CHAPTER 96-02-10

96-02-10-01. Exempt tests and methods. An individual, supervised by an individual licensed by the board, performing the following food and drug administration-waived tests and using the following methods, is exempt from the provisions of North Dakota Century Code chapter 43-48:

1. Any of the following tests by nonautomated or automated urinalysis by dipstick:
 - a. Bilirubin.
 - b. Blood.
 - c. Glucose.
 - d. Ketone.
 - e. Leukocyte.
 - f. Nitrate.
 - g. Potential of hydrogen (pH).
 - h. Protein.
 - i. Specific gravity.
 - j. Urobilinogen.
2. Fecal occult blood by any accepted method.
3. Ovulation test by visual color comparison.
4. Qualitative urine pregnancy test by visual color comparison.

5. Erythrocyte sedimentation rate by any accepted nonautomated method.
6. Whole blood glucose by any accepted single analyte method.
7. Spun microhematocrit by any accepted method.
8. Hemoglobin by single analyte instrument or manual copper sulfate method.
9. Any of the following tests by immunoassay using a rapid test device that detects antibodies or antigens:
 - a. Helicobacter pylori.
 - b. Influenza.
 - c. Mononucleosis.
 - d. Streptococcus group A.
 - e. Hepatitis C virus.
 - f. Respiratory syncytial virus.
10. Prothrombin time international normalized ratio by mechanical endpoint.
11. Antibodies to human immunodeficiency virus types 1 and 2 by clearview complete HIV 1/2 assay.

History: Effective January 1, 2006; amended effective January 1, 2008; April 1, 2012; April 1, 2013.

General Authority: NDCC 43-48-03, 43-48-04

Law Implemented: NDCC 43-48-03

TITLE 112
INTEGRATIVE HEALTH CARE

APRIL 2013

ARTICLE 112-01

GENERAL ADMINISTRATION

Chapter

<u>112-01-01</u>	<u>Organization of Board</u>
<u>112-01-02</u>	<u>Board Meetings</u>
<u>112-01-03</u>	<u>Duties of Officers</u>
<u>112-01-04</u>	<u>Licensee Duties and Disciplinary Matters</u>
<u>112-01-05</u>	<u>License Revocation, Suspension, Denial, or Limitation</u>
<u>112-01-06</u>	<u>Provisional Temporary License</u>

CHAPTER 112-01-01
ORGANIZATION OF BOARD

Section

<u>112-01-01-01</u>	<u>Organization and Functions of the Board of Integrative Health Care</u>
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112-01-01-01. Organization and functions of the board of integrative health care.

1. **History.** The board of integrative health care was established in 2011 under North Dakota Century Code chapter 43-57 to provide a means to regulate integrative health care practitioners. The first integrative health care practitioners to be licensed and regulated by the board are naturopaths in accordance with North Dakota Century Code chapter 43-58 and music therapists in accordance with North Dakota Century Code chapter 43-59. North Dakota is the sixteenth state of the United States to license naturopaths.
2. **Functions.** The function of the board is to determine if naturopaths and music therapists meet the qualifications to practice in the state of North Dakota and to prevent unqualified naturopaths and music therapists from practicing in North Dakota. The board establishes and enforces the education, licensing examinations, and professional

conduct of naturopaths and music therapists in accordance with North Dakota Century Code chapters 43-58 and 43-59.

3. **Board membership.** The initial board consists of five to seven members appointed by the governor: one naturopath, one music therapist, one medical or osteopathic doctor, one advanced practice registered nurse, one pharmacist, and up to two public members. Members of the board serve three-year terms, except for the initial board members which shall be staggered. Two to three three-year terms expire each year. Board members annually elect from the board membership the chairman, vice chairman, secretary, and treasurer of the board.
4. **Secretary and treasurer.** The secretary and the treasurer are elected by the board.
5. **Executive director.** The board may hire an executive director to oversee the clerical needs of the board, and who will answer to the board chairman.
6. **Inquiries.** Any questions or suggestions concerning these rules should be sent to the executive director or to the secretary during any time period that the executive director position is unfilled.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-02, 43-57-03

CHAPTER 112-01-02 **BOARD MEETINGS**

Section

<u>112-01-02-01</u>	<u>Regular or Special Meetings</u>
<u>112-01-02-02</u>	<u>Committees and Advisory Groups</u>
<u>112-01-02-03</u>	<u>Board Expenses</u>
<u>112-01-02-04</u>	<u>Petition to the Board</u>

112-01-02-01. Regular or special meetings. The board shall hold regular meetings at least twice a year. Regular or special meetings may be called at any time when the opinion of the board justifies such action.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03

112-01-02-02. Committees and advisory groups.

1. In order to carry out the duties and functions of the board, the chairman may establish committees from the board membership and define the duties of committees.
2. Pursuant to North Dakota Century Code section 43-57-04, the chairman shall assign an advisory group of three to five members for each profession licensed and regulated by the board.
 - a. In all consultations requested by the board, the advisory group shall provide written recommendations to the executive director within thirty calendar days of receipt of the request. The executive director shall make a copy available to each board member seven calendar days prior to the board making a final decision. An electronic copy is acceptable if the board member has given prior approval and acknowledges receipt.
 - b. The advisory group may bring new matters before the board by contacting any member of the board. The advisory group shall follow up with a written statement to the executive director within seven calendar days of contacting the board member. The executive director shall provide a copy to the chairman to determine whether it requires a special meeting.
 - c. If the board chooses not to implement the advisory group recommendations or take action on a new matter brought before the board by the advisory group, the chairman of the board is required to provide a written letter of explanation to the board member representing the profession and a copy to the advisory group within three business days.

- d. If the advisory group believes the board has unreasonably disregarded the advisory group recommendations or new concerns brought before the board, the advisory group may seek recourse through an administrative law judge. If a member of the board has established a pattern of unreasonable disregard, the advisory committee may submit a request to the governor's office to reconsider the board member's appointment for cause.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-02, 43-57-04

112-01-02-03. Board expenses. Each member of the board shall be reimbursed for the member's mileage and travel expenses for each day the member is actually engaged in performing the duties of the member's office as provided for in North Dakota Century Code sections 43-57-02 and 54-06-09. Each member of the board shall receive per diem in the amount of one hundred dollars for each day or portion thereof spent in the discharge of the member's duties on behalf of current licensees. Per diem compensation for duties related to newly regulated professions begins after the first license has been issued. No per diem shall be paid to board members for duties pertaining to petitions for inclusion.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-02

112-01-02-04. Petition to the board. Pursuant to North Dakota Century Code section 43-57-05:

1. A petition to request inclusion under the board must be received by the executive director no later than October first of an even year in order to be considered for the next legislative assembly.
 - a. The petition shall be in the form of a signed letter submitted by an officer of a regulatory board or an association representing the profession or occupation being considered for inclusion under the board. The letter shall include notification of the number of current or eligible licensees within North Dakota. For an occupation or profession already licensed and regulated within North Dakota, the letter shall also state the reason for the request.
 - b. The petition shall include a copy of the proposed bill draft. The bill draft shall include the proposed education and testing requirements, title restriction provisions, disciplinary measures, and a means to pay startup costs.
2. The board may request additional information from the petitioner as needed. The board may make further requests as necessary to carry out its duties.

3. The board shall provide a written recommendation to the petitioner within thirty calendar days of receipt of all requested information. The recommendation shall be made available to the public upon request.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-05

CHAPTER 112-01-03
DUTIES OF OFFICERS

Section

<u>112-01-03-01</u>	<u>Duties of Chairman</u>
<u>112-01-03-02</u>	<u>Duties of Secretary and Treasurer</u>
<u>112-01-03-03</u>	<u>Duties of Executive Director</u>
<u>112-01-03-04</u>	<u>Other Duties</u>

112-01-03-01. Duties of chairman. The chairman shall preside at all meetings of the board, and shall perform such other duties as generally devolve upon that office and as prescribed by law. In the chairman's absence, the vice chairman shall preside and perform the duties of the chairman. In the absence of both the chairman and vice chairman, the secretary shall preside and perform the duties of the chairman.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-02

112-01-03-02. Duties of secretary and treasurer. The secretary will review and sign minutes of all meetings as prepared by the executive director. Authorization by the treasurer is required for any checks that exceed five hundred dollars. The treasurer will review the bank statements each month. The secretary will assume the duties of the executive director if the position is unfilled.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03

112-01-03-03. Duties of executive director. The board may hire an executive director, who may be an individual or a business which functions in this capacity. If an executive director is hired, the executive director will serve as the filing, recording, and corresponding officer of the board. The executive director shall keep on file a register showing names and addresses and complete registration of all integrative health care practitioners who have been licensed by the board. The executive director shall be custodian of the seal and affix the same to documents when necessary. The executive director shall collect and receipt for all moneys received, keep an accurate account of the same, and deposit all such moneys after each regular or special meeting of the board with the bank selected by the board. The executive director shall keep an accurate record of all moneys received and disbursed and report the condition of the finances to the board after each board meeting or whenever required to do so. The executive director shall take the minutes of each board meeting and make a complete record of the minutes, to be signed by the secretary, which shall be kept in a book provided for

that purpose. The executive director will keep the board compliant with the state's open meetings laws.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03

112-01-03-04. Other duties. The officers and members of the board shall perform such duties as are enjoined upon them by law.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 28-32-02

CHAPTER 112-01-04
LICENSEE DUTIES AND DISCIPLINARY MATTERS

Section

<u>112-01-04-01</u>	<u>Unlicensed Practice</u>
<u>112-01-04-02</u>	<u>Code of Ethics</u>
<u>112-01-04-03</u>	<u>Unprofessional Conduct</u>
<u>112-01-04-04</u>	<u>Administrative Sanction</u>
<u>112-01-04-05</u>	<u>Report of Disciplinary Actions</u>
<u>112-01-04-06</u>	<u>Reporting Contagious or Infectious Diseases</u>
<u>112-01-04-07</u>	<u>Reporting Child Abuse</u>

112-01-04-01. Unlicensed practice. Upon receipt of a complaint that a person is practicing without a license, the board may make a determination, as to whether a person is practicing without a license. In order to make this determination, the board may conduct an investigation to make a determination if an individual is unlicensed, including reviewing records, interviewing persons who may have knowledge of the unlicensed practice, contacting third parties to verify background, or requesting any other information that may help make the determination of unlicensed activity.

If the determination is made that an individual is unlicensed pursuant to this section, the board may send a letter to the person about whom the complaint was made directing that the person immediately cease and desist. The person will be given ten working days to submit an application to practice. If the person does not apply, or continues to practice without a license, the person may be referred to the state's attorney in the county in which the person is located for prosecution.

The board is not required to follow this procedure, and this procedure does not provide a criminal defendant with any additional rights, nor a defense against prosecution or conviction in a criminal proceeding.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-02, 43-57-03, 43-57-11, 43-59-03

112-01-04-02. Code of ethics.

- 1. Naturopaths.** The board adopts the 2011 edition of the American Association of Naturopathic Physicians Code of Ethics as the code of ethical conduct governing the practice of naturopathy.
- 2. Music therapists.** The board adopts the 2011 edition of the Certification Board for Music Therapists Code of Professional Practice as the code of ethical conduct governing the practice of music therapy.

History: Effective April 1, 2013.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03

112-01-04-03. Unprofessional conduct. The board may revoke, suspend, or deny a license to any person otherwise qualified or licensed by the board who is found to have committed unprofessional conduct. Unprofessional conduct includes the following:

1. Exploitation of patients for financial gain, which includes:
 - a. Overutilization of services. Overutilization is defined as services rendered or goods or appliances sold to a patient for the financial gain of the licensee or a third party, which are excessive in quality or quantity to the justified needs of the patient.
 - b. Ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient.
 - c. Exercising undue influence on a patient or client, including the promotion or the sale of services, goods, or appliances in such a manner as to exploit the patient or client.
 - d. The administration of treatment or the use of diagnostic procedures which are excessive as determined by the customary practices and standards of the local community of licensees.
2. Willfully harassing, abusing, or intimidating a patient, either physically or verbally.
3. Failing to maintain a patient record and a billing record for each patient, which accurately reflects the evaluation or treatment, or both, of the patient and the fees charged to the patient. Unless otherwise provided, all patient records must be retained for at least ten years.
4. The willful or grossly negligent failure to comply with the substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of the profession.
5. Any conduct which has endangered or is likely to endanger the health, welfare, or safety of the public, including habitual alcohol abuse, illegal use of controlled substances, or conducting unauthorized experiments or tests upon patients.
6. Conviction of a crime which is substantially related to the qualifications, functions, or duties of a profession or occupation regulated by the board.
7. Conviction of a felony, or any offense involving moral turpitude, dishonesty, or corruption.
8. Violation of any of the provisions of law regulating the dispensing or administration of narcotics, dangerous drugs, or controlled substances.

9. The commission of any act involving moral turpitude or dishonesty, whether the act is committed in the course of the individual's activities as a licenseholder or otherwise.
10. Knowingly making or signing any false certificate or other document relating to the practice of patient care which falsely represents the existence or nonexistence of a state of facts.
11. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violations of, or conspiring to violate any provision of the law or the rules adopted by the board.
12. Making or giving any false statement or information in connection with the application for issuance of a license.
13. Participation in any act of fraud or misrepresentation.
14. Except as required by law, the unauthorized disclosure of any information about a patient revealed or discovered during the course of examination or treatment.
15. The offering, delivering, receiving, or accepting of any rebate, refund, commission, preference, patronage, dividend, discount, or other consideration as compensation or inducement for referring patients to any person.
16. Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which a licensee knows or has reason to know that the licensee is not competent to perform, or performing without adequate supervision professional services which a licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger.
17. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience, or licensure, to perform them.
18. Advertising or soliciting for patronage that is not in the public interest, which includes:
 - a. Advertising or soliciting which is false, fraudulent, deceptive, or misleading.
 - b. Advertising or soliciting which guarantees any service or result.

- c. Advertising or soliciting which makes any claim relating to professional services or products or the cost or price thereof which cannot be substantiated by the licensee.
 - d. Advertising or soliciting which make claims relating to professional superiority which cannot be substantiated by the licensee.
 - e. Advertising or soliciting which is based upon a claim that the licensee uses a secret or special method of treatment and the licensee refuses to divulge the secret or special method of treatment to the board.
 - f. Advertising no out-of-pocket expenses or practicing the same.
19. Violation of any term of suspension or probation imposed by the board.
20. Initiating or engaging in any sexual conduct, sexual activities, or sexualizing behavior involving a current patient, even if the patient attempts to sexualize the relationship, except when the patient is the licensee's spouse.

History: Effective April 1, 2013.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-08

112-01-04-04. Administrative sanction. An administrative sanction shall be imposed in the amount of three times the application fee for any applicant or licensee regulated by the board who provides false or deceptive information with regard to any material fact concerning eligibility for initial license or renewal after verifying or certifying that the information provided is true. This includes all material information provided in an initial license application, an annual renewal, or a report of compliance with mandatory continuing education requirements. The imposition of an administrative sanction under this section is not a disciplinary action of the board; however, it does not preclude the board from also imposing disciplinary action, or other penalties provided by law, for the same conduct in appropriate cases. An applicant or licensee may challenge the imposition of an administrative sanction under this section in a hearing under North Dakota Century Code chapter 28-32 before an administrative law judge.

History: Effective April 1, 2013.

General Authority: NDCC 43-57-03, 43-57-08

Law Implemented: NDCC 43-57-08

112-01-04-05. Report of disciplinary actions. The board will report all final disciplinary actions to the federal health care integrity and protection database. The board may also publish all final disciplinary actions in select state newspapers.

History: Effective April 1, 2013.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-08

112-01-04-06. Reporting contagious or infectious diseases. To comply with the state law regarding contagious or infectious diseases, medical practitioner licensees shall immediately notify the health officer of the community of the existence of such diseases.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03, 43-58-09

Law Implemented: NDCC 23-07-01, 43-57-03, 43-58-09

112-01-04-07. Reporting child abuse. A licensee having knowledge of or reasonable cause to suspect that there is child abuse or neglect is mandated to report the circumstances to the department of human services if the knowledge or suspicion is derived from information received by the licensee in the licensee's professional capacity.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 50-25.1-03

CHAPTER 112-01-05
LICENSE REVOCATION, SUSPENSION, DENIAL, OR LIMITATION

Section

<u>112-01-05-01</u>	<u>Relicensure After Revocation</u>
<u>112-01-05-02</u>	<u>License Suspension</u>
<u>112-01-05-03</u>	<u>License Denial or Limitation</u>
<u>112-01-05-04</u>	<u>Right to Appeal</u>

112-01-05-01. Relicensure after revocation. A licensee who has had a license revoked is not eligible to apply for relicensure for at least one year following the date the revocation order was signed by a board official, unless otherwise specified in the order.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-08

Law Implemented: NDCC 43-57-11

112-01-05-02. License suspension. During a period of suspension, the suspended licensee shall not provide or assist in any type of patient care or patient communications.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-08

Law Implemented: NDCC 43-57-11

112-01-05-03. Denial or limitation of licensure. In the event the board makes an initial determination that an applicant does not meet the requirements for licensure, or that an applicant should be granted a limited or conditioned license, the board shall promptly give the applicant notice, personally or by certified mail, that it has made an informal decision to deny the application or to place conditions or limitations on the applicant's license. The board shall also advise the applicant as follows:

1. The applicant has the right to have the merits of the application considered at a formal hearing in accordance with the provisions of the North Dakota Administrative Agencies Practice Act, North Dakota Century Code chapter 28-32.
2. To secure a formal hearing on the merits of the application, the applicant must contact the board to request the hearing within sixty days of being given notice of the board's informal decision.
3. In the event an applicant does not request a formal hearing within sixty days of the date on which the applicant is given notice that the board has made an informal decision to deny the application or to place

conditions or limitations on the applicant's license, then the board's informal decision will become the final order of the board.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-09

112-01-05-04. Right to appeal. If a person is aggrieved by a denial, suspension, or revocation of a license, the aggrieved person may appeal the decision pursuant to the Administrative Agencies Practice Act.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-09

CHAPTER 112-01-06
PROVISIONAL TEMPORARY LICENSE

Section

112-01-06-01

License for Interval Between Board Meetings

112-01-06-01. License for interval between board meetings.

1. The board may issue a provisional temporary license to an applicant if:
 - a. The applicant holds a valid license in another state; and
 - b. In the board's judgment the applicant meets all of the requirements for licensure.

2. A provisional temporary license is valid from the date of issue for the shorter of three months or until the time of the next regularly scheduled meeting of the board.

History: Effective April 1, 2013.

General Authority: NDCC 43-57-03, 43-58-07, 43-59-03

Law Implemented: NDCC 43-57-03, 43-58-07, 43-59-03

ARTICLE 112-02

NATUROPATHIC LICENSURE

Chapter

<u>112-02-01</u>	<u>Admission to Practice Naturopathic Medicine</u>
<u>112-02-02</u>	<u>Authority of Naturopaths</u>
<u>112-02-03</u>	<u>Continuing Naturopathic Education</u>

CHAPTER 112-02-01

ADMISSION TO PRACTICE NATUROPATHIC MEDICINE

Section

<u>112-02-01-01</u>	<u>Definitions</u>
<u>112-02-01-02</u>	<u>Approval of Schools</u>
<u>112-02-01-03</u>	<u>Applications for Licensure</u>
<u>112-02-01-04</u>	<u>Licensure by Endorsement</u>
<u>112-02-01-05</u>	<u>Photograph</u>
<u>112-02-01-06</u>	<u>Examination Requirements</u>
<u>112-02-01-07</u>	<u>License Issued</u>
<u>112-02-01-08</u>	<u>Change of Location - License Displayed</u>
<u>112-02-01-09</u>	<u>License Renewal</u>
<u>112-02-01-10</u>	<u>Lapsed Licenses</u>
<u>112-02-01-11</u>	<u>Fees</u>

112-02-01-01. Definitions. Unless specifically stated otherwise, all definitions found in North Dakota Century Code chapter 43-58 are applicable to this title. In this title, unless the context or subject matter otherwise requires:

1. "Administration" means the intradermal, intramuscular, intravenous, oral, rectal, subcutaneous, sublingual, topical, auricular, nasal, ocular, or vaginal routes of administration in accordance with naturopathic medical training.
2. "Council" means the council on naturopathic medical education or its successor. The successor must be an accrediting agency recognized by the United States department of education.
3. "In accordance with naturopathic medical training" means the practice of naturopathic medicine by means that are consistent with the education of an approved naturopathic medical college, are generally recognized as safe and effective, and generally considered to be within the accepted practice standards for the naturopathic profession.
4. "Manipulation of the spine" means therapeutic osseous manipulation techniques to realign the cervical, thoracic, and lumbar vertebrae and sacrum.

5. "National board" means the North American board of naturopathic examiners or its successor.
6. "National board examinations" means the naturopathic physicians licensing examinations (NPLEX) or its successor.
7. "Nondrug prescription device" includes diabetic supplies, intrauterine devices, cold lasers, orthotics, and transcutaneous electrical stimulation units.
8. "Nonprescription topical drug" means a topical analgesic, antibacterial, antifungal, antiseptic, antipruritic, or hormone that is not a prescription drug.
9. "Prescription drug" means a legend drug as defined by section 503(b) of the Act of Congress entitled the Federal Food, Drug and Cosmetic Act [21 U.S.C. 353 et seq.] and under its definitions its label is required to state "Rx only".

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03

112-02-01-02. Approval of schools. The board shall approve a naturopathic medical school if it meets the definition pursuant to North Dakota Century Code section 43-58-01 and is accredited by the council. The board shall maintain an updated list of approved naturopathic medical schools and make it available upon inquiry.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03, 43-58-01

Law Implemented: NDCC 43-57-03

112-02-01-03. Application for licensure. Application shall be made on the official form issued by the board.

1. Applicants seeking licensure pursuant to North Dakota Century Code section 43-58-05 shall be considered when all of the following have been received:
 - a. A signed and dated completed official application form.
 - b. An official transcript of the national board examinations sent directly to the board from the national board verifying satisfactory passage of both part one and part two.
 - c. An official complete transcript sent directly to the board from the approved naturopathic medical school from which the applicant

graduated verifying date of graduation and completion of clinical training.

- d. The application fee and the initial license fee.
2. Applicants seeking a license or limited license pursuant to North Dakota Century Code section 43-58-06 shall submit the following documents for consideration:
 - a. A signed and dated completed official application form.
 - b. An official school transcript verifying graduation from a school of naturopathy.
 - c. Documentation of supervised clinical training and practical postgraduate clinical experience, including dates, clinic contact information, and supervisor contact information for verification purposes.
 - d. Documentation of North Dakota residency throughout calendar year 2011.
 - e. Documentation of the practice of naturopathy in North Dakota in 2011.
 - f. The application fee and the licensing fee.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-58-04, 43-58-05, 43-58-06

112-02-01-04. License by endorsement. An application for license by endorsement will be considered by the board if the following conditions are met:

1. The candidate has graduated from and holds a degree from an approved naturopathic medical school.
2. The candidate holds a current valid license in good standing to practice as a naturopath in another state or jurisdiction. Official written verification of licensure status must be received by the board from the other state or jurisdiction.
3. The examination requirements of the other state or jurisdiction are substantially similar as in North Dakota.
4. The candidate has filed with the board an official application for licensure by endorsement, a copy of the diploma from an approved

naturopathic medical school, a copy of the current valid license, and the required application fee.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-58-07

112-02-01-05. Photograph. An unmounted passport photograph of the applicant must be pasted in the space provided on the application before filing with the board. The photograph must have been taken within one year of the date of application.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-04, 43-58-06

112-02-01-06. Examination requirements.

1. Those applicants for licensure who have obtained a passing score on the naturopathic physicians licensing examinations (NPLEX) part one and part two or its successor shall be deemed to have met the examination requirement specified in North Dakota Century Code section 43-58-05.
2. The examination requirements for licensure must be successfully completed within four years from graduation. The board may grant an exception to this requirement for applicants who have concurrently pursued another graduate degree, and the applicant presents a verifiable, rational, and compelling explanation for not meeting the four-year time limit.
3. An applicant is permitted a maximum of three attempts to pass each part or component of the national board examination. If the applicant fails to pass each part or component of the national board examination after three attempts, the applicant must wait one year and reapply as a new applicant.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-58-05

112-02-01-07. License issued. When it shall have been determined by the board that any candidate has successfully graduated from an approved school, passed the national board examination, and is a person of good moral character, there shall be issued to such candidate a license to practice naturopathy.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-06

Law Implemented: NDCC 43-57-05, 43-57-06

112-02-01-08. Location of practice - License displayed.

1. If a licensed naturopath moves from the naturopath's primary location, the office of the executive director must be notified of the change of location of the naturopath. A current certificate or duplicate certificate issued by the board must at all times be displayed in each office location of the naturopath. In case of loss or destruction, a duplicate certificate may be issued by the board upon receipt of satisfactory evidence of the loss or destruction.
2. A licensed naturopath providing temporary services in offsite locations must carry a duplicate license wallet card and show the card upon request.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-58-03

112-02-01-09. License renewal.

1. Every naturopath who has been licensed by the board shall renew the license by remitting a renewal fee on or before December thirty-first of each odd-numbered year and completing the questionnaire provided by the board. For applicants who receive an initial license after July first in an odd-numbered year, the license will be deemed to be automatically renewed on December thirty-first for an additional two years without payment of an additional renewal fee.
2. The applicant for renewal shall certify on the questionnaire that the continuing education requirements have been or will be met by December thirty-first. The applicant must keep records of completed continuing education. The board shall conduct random compliance audits of licensees. Failure to complete continuing education is considered unprofessional conduct.
3. A license renewal application received on or after January first of an even-numbered year is a late renewal and requires a new completed application form, the renewal fee, plus a late fee set by the board. Proof of appropriate continuing education hours must be presented. A license that has not been renewed by December thirty-first in an odd-numbered year is a lapsed license.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-06, 43-57-07, 43-58-03

112-02-01-10. Lapsed licenses. Once a license has lapsed, the person who held the lapsed license may not practice naturopathic medicine or use a title reserved under state law for individuals who are licensed by the board until a new

license is issued. A person whose license has lapsed but who continues to practice naturopathic medicine or use a restricted title violates state law and this chapter. Such a violation is grounds for denying an application by the former licensee for renewal of the lapsed license or for a new license.

History: Effective April 1, 2013.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-11, 43-58-03

112-02-01-11. Fees. The board charges the following nonrefundable fees:

1. **Application.** The fee for filing an application for an initial license is fifty dollars.
2. **Initial license.** The fee for an initial license is five hundred dollars. The licensing period is biennial, ending on December thirty-first every odd-numbered year. The initial license fee shall be prorated quarterly based upon the time period remaining in the two-year cycle at application.
3. **Temporary license.** The temporary license fee for naturopaths shall be one hundred dollars. The cost of the temporary license fee will be applied toward the initial license fee upon receipt of application for the initial license.
4. **Renewal.** Licenses renew on December thirty-first every odd-numbered year. The renewal fee is four hundred dollars for active status and two hundred dollars for inactive status.
5. **Change of status.** To change from inactive to active status, the fee shall be prorated on a quarterly basis on the time period remaining in the two-year cycle.
6. **Late filing.** An additional late filing fee will be charged on renewal applications not received by December thirty-first every odd-numbered year. The late filing fee for naturopaths is seventy-five dollars.
7. **Duplicate license.** The duplicate license fee for a naturopath license certificate is twenty-five dollars. The duplicate license fee for a naturopath license wallet card is twenty dollars.

History: Effective April 1, 2013.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07, 43-58-05

CHAPTER 112-02-02
AUTHORITY OF NATUROPATHS

Section

<u>112-02-02-01</u>	<u>Rights and Privileges</u>
<u>112-02-02-02</u>	<u>Signing Death Certificates</u>
<u>112-02-02-03</u>	<u>Advertising</u>
<u>112-02-02-04</u>	<u>Authority to Administer, Prescribe, and Dispense</u>
<u>112-02-02-05</u>	<u>Intradermal, Intramuscular, Intravenous, and Subcutaneous Administration</u>

112-02-02-01. Rights and privileges. Unless otherwise limited by statute, naturopaths shall be entitled to all rights and privileges of physicians in this state.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-58-08, 43-58-09, 43-58-10

112-02-02-03. Advertising. Naturopaths will be privileged to advertise their practice in any legitimate manner set forth in the code of ethics adopted by the board, except as limited or prohibited by statute.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-58-03, 43-58-08

112-02-02-04. Authority to administer, prescribe, and dispense. The practice of naturopath medicine includes the administration, prescription, dispensing, ordering, or performing of:

1. Food, vitamins, minerals, nutritional supplements, digestive enzymes, botanical medicine, and homeopathic remedies.
2. Health care counseling, nutritional counseling and dietary therapy, hydrotherapy, and naturopathic physical applications and therapeutic devices. Naturopathic physical application does not include manipulation of the spine. Naturopathic physical application does include osseous manipulation of the extremities, ribs, and pelvis.
3. Nondrug prescription devices.
4. Nonprescription topical drugs.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-58-08

112-02-02-05. Intradermal, intramuscular, intravenous, and subcutaneous administration.

1. A naturopath may administer vitamins, minerals, amino acids, and homeopathic remedies in accordance with naturopathic medical training through intradermal, intramuscular, subcutaneous injection, or intravenous therapy. Substances administered by injection or intravenous therapy must be manufactured and supplied by a manufacturer required to register with the United States food and drug administration or compounded by a pharmacy licensed by the state department of health.
2. A naturopath may use intravenous therapy when the naturopath has submitted an attestation of training to the board. The training must be at least sixteen hours of instruction. At least eight hours of instruction must be a graduate-level course through an approved naturopathic medical school. Instruction must include:
 - a. Indications;
 - b. Contraindications;
 - c. Formularies;
 - d. Emergency protocols;
 - e. Osmolarity calculation;
 - f. Aseptic technique; and
 - g. Proper documentation.
3. A naturopath must retain documentation of intravenous training for at least five years from attestation date.
4. Intravenous chelation therapy is limited to use for heavy metal toxicity.
5. A naturopath who uses injection or intravenous therapy must have a plan to manage adverse events, including sensitivity, allergy, overdose, or other unintended reactions.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-08

CHAPTER 112-02-03
CONTINUING NATUROPATHIC EDUCATION

Section

<u>112-02-03-01</u>	<u>Requirements</u>
<u>112-02-03-02</u>	<u>Exceptions</u>
<u>112-02-03-03</u>	<u>Board Approval</u>
<u>112-02-03-04</u>	<u>Board Audit</u>
<u>112-02-03-05</u>	<u>Inactive Status</u>

112-02-03-01. Requirements. All active licensees shall complete:

1. A jurisprudence seminar sponsored by the board within twelve months after an initial license has been issued to practice naturopathy in North Dakota.
2. A minimum of forty hours of approved continuing naturopathic education (CNE) credits biennially. Only hours earned at board-approved continuing naturopathic education programs will be acceptable. One hour of credit is earned for every fifty minutes of approved continuing education.
3. Five of the forty hours of approved continuing naturopathic education credits must be topics on pharmacology.
4. An extension of time or other waiver to complete the hours required in this section shall be granted upon written application if the licensee failed to meet the requirements due to illness, military service, medical or religious missionary activity, or other extenuating circumstance.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07

112-02-03-02. Exceptions. The following naturopaths are not required to meet the requirements of this chapter:

1. Naturopaths who are enrolled in full-time graduate naturopathic medical education programs (residencies and fellowships).
2. Naturopaths who hold a provisional temporary license and naturopaths who have not renewed their licenses for the first time since being granted a regular permanent license by the board.
3. Naturopaths who have retired from the active practice of medicine. This exception is available only to retired naturopaths who have completely and totally withdrawn from the practice of naturopathic medicine. Any naturopath seeking to be excused from completing continuing naturopathic education requirements under this subsection

must submit an affidavit to the board (on the board's form) certifying that the naturopath will render no naturopathic medical services during the term of the next continuing naturopathic education reporting period.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07

112-02-03-03. Board approval.

1. In order to receive board approval, a continuing naturopathic education (CNE) program must meet one of the following:
 - a. A program sponsored by the board;
 - b. A program sponsored by an approved naturopathic medical school;
 - c. A health-related seminar sponsored by a college or university accredited by an organization recognized by the United States department of education;
 - d. A health-related seminar qualifying for continuing education credits through the state board of medical examiners, the state board of chiropractic examiners, or the state board of nursing; or
 - e. An educational program arranged by the North Dakota association of naturopathic doctors or the American association of naturopathic physicians or one of its affiliates and approved by the board.
2. In order to have a program approved, the sponsor shall submit to the board the following information in addition to any other information requested by the board:
 - a. A detailed course outline or syllabus, including such items as the method of instruction and the testing materials.
 - b. The qualifications and subjects taught by each instructor appearing in the program.
 - c. The procedure to be used for recording attendance of those attendees seeking to apply for continuing naturopathic education credit.
3. The board shall be the sole determinant of whether the courses are approved for continuing naturopathic education credit. The board shall make that determination based on the information submitted to it. In making its decision, the board shall determine whether the course submitted for credit meets the basic goals of continuing naturopathic

education. Those basic goals include the growth of knowledge, the cultivation of skills and greater understanding, the continual striving for excellence in naturopathic care, and the improvement of health and welfare of the public.

4. Except for continuing naturopathic education credits for a program sponsored by the board, it is the responsibility of the licensee to verify the appropriate credit designation with the source of the program, not with the board. All licensees are encouraged to verify eligibility for continuing naturopathic credit and the appropriate credit designation before taking any particular course.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07

112-02-03-04. Board audit. Each biennium the board will audit randomly selected naturopaths to monitor compliance with the continuing education requirements. Any naturopath so audited will be required to furnish documentation of compliance, including the name of the accredited continuing naturopathic education provider, name of the program, hours of continuing education completed, dates of attendance, and verification of attendance. Any naturopath who fails to provide verification of compliance with the continuing naturopathic education requirements will be subject to revocation of licensure. In order to facilitate the board's audits, every naturopath is required to maintain a record of all continuing naturopathic education activities in which the naturopath has participated. Every naturopath must maintain those records for a period of at least two years following the time when those continuing naturopathic education activities were reported to the board.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-07, 43-57-08

112-02-03-05. Inactive status. On or before December thirty-first of each odd-numbered year, licensees may elect to renew their licenses as inactive. The inactive status is at a reduced fee for those licensees who do not practice, consult, or provide any service relative to the naturopathic medical profession in the state. The inactive licensee does not have to provide proof of continuing naturopathic education hours. Any inactive licensee may activate the license at any time by paying an additional fee and showing proof of thirty hours of continuing naturopathic education in the preceding twenty-four months.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-07, 43-57-08

CHAPTER 112-03-01
MUSIC THERAPY

Section

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MUSIC THERAPIST LICENSURE

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CHAPTER 112-03-01

MUSIC THERAPY

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112-03-01-01. Definitions. Unless specifically stated otherwise, all definitions found in North Dakota Century Code chapter 43-59 are applicable to this title. In this title, unless the context or subject matter otherwise requires:

1. "National association" means the American music therapy association or its successor. The successor may be an accrediting agency recognized by the United States department of education.
2. "National board" means the certification board for music therapists or its successor.
3. "National board examinations" means the music therapy examination for board certification or its successor.

History: Effective April 1, 2013.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-59-03

112-03-01-02. Application for licensure. Application shall be made on the official form issued by the board. The form may be secured from the board's official website.

1. Applicants holding current board certification from the certification board for music therapists shall be considered when all of the following have been received:
 - a. A signed and dated completed official application form, including the applicant's certification number from the certification board for music therapists.
 - b. The application fee and the initial license fee.
 - c. Applicants holding a professional designation from the national music therapy registry (RMT-registered music therapist; CMT-certified music therapist; ACMT-advanced certified music therapist) shall submit the following documents for consideration:
 - (1) A signed and dated completed official application form;
 - (2) A photocopy of the professional designation granted by the national music therapy registry. The copy must include the type of designation and designation number;
 - (3) A current curriculum vitae documenting the practice of music therapy, including the contact information for two professional references, one of which must relate to the practice of music therapy; and
 - (4) The application fee and the initial licensing fee.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-59-03

112-03-01-03. License by endorsement. An application for license by endorsement will be considered by the board if the following conditions are met:

1. The candidate has received a music therapy degree from a national association-approved school.
2. The candidate holds a current valid license in good standing to practice as a music therapist in another state or jurisdiction. Official written verification of licensure status must be received by the board from the other state or jurisdiction.
3. The board certification requirements of the other state or jurisdiction are the same. Official verification of board certification requirements must be received by the board from the other state or jurisdiction.
4. The candidate has filed with the board an official application for licensure by endorsement, a copy of the diploma from an approved

school, a copy of the current valid license, and the required application fee.

History: Effective April 1, 2013.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-59-03

112-03-01-04. Examination requirements.

1. Those applicants for licensure who have obtained a passing score on the music therapy examination for board certification or who transitioned into board certification and have remained actively certified by the certification board for music therapists or its successor shall be deemed to have met the examination requirements.
2. Those applicants who hold a professional designation from the national music therapy registry are exempt from the examination requirement when applying for the initial license but must obtain a passing score on the national board examination prior to renewing their licenses. Official verification of satisfactory passage must be received by the board before a license may be renewed.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-59-03

112-03-01-05. License issued - Approved designation. When it shall have been determined by the board that any candidate is at least eighteen years of age, has met the examination requirements outlined in section 112-03-01-04, and is a person of good moral character, there shall be issued to such candidate a license to practice music therapy. The licensee may use the designation music therapist.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-06, 43-59-02, 43-59-03

112-03-01-06. License displayed.

1. If a licensed music therapist moves to a new office location, the board must be notified of the change.
2. A current certificate or duplicate certificate issued by the board must at all times be displayed in each office location of the music therapist. In case of loss or destruction, a duplicate certificate may be issued by the board upon receipt of satisfactory evidence of the loss or destruction.

3. A licensed music therapist providing temporary services in offsite locations must carry a duplicate license wallet card and show the card upon request.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-59-02

112-03-01-07. License renewal and fees.

1. Every music therapist who has been licensed by the board shall renew the license by remitting a renewal fee on or before December thirty-first of each odd-numbered year and completing the questionnaire provided by the board. For applicants who receive an initial license after July first in an odd-numbered year, the license will be deemed to be automatically renewed on December thirty-first for an additional two years without payment of an additional renewal fee.
2. The applicant for renewal shall certify on the questionnaire that the continuing education requirements have been or will be met by December thirty-first. The applicant must keep records of completed continuing education. The board shall conduct random compliance audits of licensees. Failure to complete continuing education is considered unprofessional conduct.
3. A license renewal application received on or after January first of an even-numbered year is a late renewal and requires a new completed application form, the renewal fee, plus a late fee set by the board. Proof of appropriate continuing education hours must be presented. A license that has not been renewed by December thirty-first in an odd-numbered year is a lapsed license.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-07, 43-59-03

112-03-01-08. Lapsed licenses. Once a license has lapsed, the person who held the lapsed license may not practice music therapy or use a title reserved under state law for individuals who are licensed by the board until a new license is issued. A person whose license has lapsed but who continues to practice music therapy or use a restricted title violates state law and this chapter. Such a violation is grounds for denying an application by the former licensee for renewal of the lapsed license or for a new license.

History: Effective April 1, 2013.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07, 43-59-02

112-03-01-09. Continuing education requirements.

1. All active licensees shall complete a minimum of forty hours of approved continuing education credit biennially. Only hours earned at board-accepted continuing education programs will be allowed. One hour of credit is earned for every fifty minutes of actual class time.
2. An extension of time or other waiver to complete the hours required in subsection 1 shall be granted upon written application if the licensee failed to meet the requirements due to illness, military service, medical or religious missionary activity, or other extenuating circumstance.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07, 43-59-03

112-03-01-10. Board approval of continuing education.

1. In order to receive board approval, a continuing education program must be accepted by the national board.
2. It is the responsibility of the licensee to verify the appropriate credit designation with the source of the program, not with the board. All licensees must verify eligibility for continuing credit and the appropriate credit designation before taking any particular course.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07, 43-59-03

112-03-01-11. Board audit. Each biennium the board will audit randomly selected music therapists to monitor compliance with the continuing education requirements. Any music therapist so audited will be required to furnish documentation of compliance, including the name of the continuing education provider, name of the program, hours of continuing education completed, dates of attendance, and verification of attendance. Any music therapist who fails to provide verification of compliance with the continuing education requirements will be subject to revocation of licensure. In order to facilitate the board's audits, every music therapist is required to maintain a record of all continuing education activities in which the music therapist has participated. Every music therapist must maintain those records for a period of at least two years following the time when those containing education activities were reported to the board.

History: Effective April 1, 2013.

General Authority: NDCC 28-32-02, 43-57-03

Law Implemented: NDCC 43-57-07, 43-57-08, 43-59-03

112-03-01-12. Fees. The board charges the following nonrefundable fees:

1. **Application.** The fee for filing an application for an initial license is fifty dollars.

2. **Initial license.** The fee for an initial license is one hundred dollars. The licensing period is biennial, ending on December thirty-first every odd-numbered year. The initial license fee shall be prorated quarterly based upon the time period remaining in the two-year cycle at application.
3. **Temporary license.** The temporary license fee shall be one hundred dollars. The cost of the temporary license fee will be applied toward the initial license fee upon receipt of application for the initial license.
4. **Renewal.** Licenses renew on December thirty-first every odd-numbered year. The renewal fee is one hundred dollars for active status and seventy-five dollars for inactive status.
5. **Change of status.** To change from inactive to active status, the fee shall be prorated on a quarterly basis on the time period remaining in the two-year cycle.
6. **Late filing.** An additional late filing fee will be charged on renewal applications not received by December thirty-first every odd-numbered year. The late filing fee is seventy-five dollars.
7. **Duplicate license.** The duplicate license fee for a license certificate is twenty-five dollars. The duplicate license fee for a license wallet card is twenty dollars.

History: Effective April 1, 2013.

General Authority: NDCC 43-57-03

Law Implemented: NDCC 43-57-03, 43-57-07, 43-59-03