

NORTH DAKOTA ADMINISTRATIVE CODE

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

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TITLE 33.1
DEPARTMENT OF ENVIRONMENTAL QUALITY

JANUARY 2023

ARTICLE 33.1-04

~~[RESERVED]~~ ENVIRONMENTAL RESTORATION

Chapter

33.1-04-01 General Provisions

33.1-04-02 North Dakota Environmental Priorities List

**CHAPTER 33.1-04-01
GENERAL PROVISIONS**

Section

33.1-04-01-01 Scope

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33.1-04-01-01. Scope.

Nothing in this article is intended to limit the department from using the fund for any purpose consistent with North Dakota Century Code chapter 23.1-10, even if such purpose is not addressed in these rules.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

33.1-04-01-02. Definitions.

The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 23.1-10, except:

1. "Applicant" means any person seeking, by site, the use of environmental quality restoration fund moneys or seeking department approval of a voluntary response action plan under North Dakota Century Code section 23.1-10-15.
2. "Approvable action" means any action for which the director may approve the use of environmental quality restoration fund moneys.

3. "Contaminant of concern" refers to the regulated substance leading to a site's contamination.
4. "Contaminant source" means a containment unit, process, or any activity which contributed to, solely or in part, a release of a regulated substance to the environment.
5. "Delisted site" means any site removed from the North Dakota environmental priorities list.
6. "Director" means the North Dakota department of environmental quality director, or their designated representative.
7. "Environmental hazard" means any condition existing at a site that may represent a hazard to human or environmental health.
8. "Listed site" means any property included in the North Dakota environmental priorities list.
9. "North Dakota environmental priorities list" means a list of contaminated sites that the department has determined may be subject to department response using the environmental quality restoration fund.
10. "Priority" means a qualitative ranking of a listed site.
11. "Recognized environmental condition" means the presence, or likely presence, of any regulated substances in, on, or at a property due to a release to the environment; conditions indicative of a release to the environment; or under conditions that pose a threat of a future release to the environment.
12. "Subject property" means any property that is the subject of any remedial action, restoration, assessment, corrective action, mitigation, or monitoring, being conducted with environmental quality restoration fund moneys or under voluntary response action conditions.
13. "Unlisted site" means any site that has not been added to the North Dakota environmental priorities list.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

33.1-04-01-03. Actions approvable for funding.

The director shall approve any use of moneys from the environmental quality restoration fund. Approvable actions include:

1. **Assessment.** Assessment activities gather information about current conditions at a site.
2. **Abatement.** Abatement activities are conducted to reduce or remove environmental hazards at a subject site. Abatement activities may or may not remove all environmental hazards or contaminant sources. Disposal of waste materials is included in this action.
3. **Contaminant source removal.** Contaminant source removal involves the removal and disposal of a contaminant source. This may or may not remove all environmental hazards. Contaminant source removal is not likely to address existing contamination.
4. **Emergency remedial efforts.** Emergency remedial efforts are activities taken to address imminent danger or the threat of imminent danger.
5. **Institutional controls.** Institutional controls may be engineered systems, such as vapor mitigation systems, land use requirements through zoning or environmental covenants, or

binding legal agreements that reduce the risk of human or environmental health being negatively impacted by contamination at a subject property.

6. **Mitigation.** Mitigation involves activities to avoid, reduce, or minimize environmental damage resulting from a release. These activities may be taken at the subject property or another property.

7. **Monitoring.** Monitoring involves collecting environmental data at a site over a period of time. Monitoring may be conducted to determine the effectiveness of remedial efforts, the effectiveness of institutional controls, and other activities. Monitoring activities may be conducted jointly, or in addition to, remediation or monitoring activities of responsible parties.

8. **Remediation.** Remediation involves all activities conducted to reduce, remove, or repair environmental contamination at a subject property. Disposal of contaminated media is included in this action.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

33.1-04-01-04. Use of fund for actions at contaminated sites.

Chapter 33.1-04-02 contains the procedures for using environmental quality restoration fund moneys at sites on the North Dakota environmental priorities list. Generally, at contaminated or potentially contaminated sites not on the North Dakota environmental priorities list, the department only may use environmental quality restoration fund moneys to fund emergency remedial actions or investigative activities to determine whether listing is appropriate.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

33.1-04-01-05. Use of fund for mitigation activities.

The department may use the fund for activities to mitigate environmental damage at the location of the release or at another appropriate location where the department determines that harm caused by the release necessitates mitigation. Mitigation locations are not included on the North Dakota environmental priorities list.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

33.1-04-01-06. Cost recovery.

The department reserves the right to conduct cost recovery activities in accordance with North Dakota Century Code section 23.1-10-12, where appropriate. Nothing in this article is intended to limit the department's ability to recover costs.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

33.1-04-01-07. Identifying responsible parties.

The department shall undertake reasonable efforts to identify responsible parties for subject properties, including examining property records, reviewing historical spill information and other

documents, conducting site investigations and sampling, and requesting information from relevant persons. A person that acquires property may show that they made "all appropriate inquiries into the previous ownership" under North Dakota Century Code section 23.1-10-08 by providing documentation that they followed the process for assessing the environmental conditions of a property presented in the United States environmental protection agency's All Appropriate Inquiries Final Rule, 40 C.F.R. Part 312, or ASTM International's Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (E 1527-13).

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03, 23.1-10-08

CHAPTER 33.1-04-02
NORTH DAKOTA ENVIRONMENTAL PRIORITIES LIST

Section

- 33.1-04-02-01 Purpose
- 33.1-04-02-02 Eligibility
- 33.1-04-02-03 Adding Sites to the North Dakota Environmental Priorities List
- 33.1-04-02-04 Delisting Sites
- 33.1-04-02-05 Actions at Listed Sites
- 33.1-04-02-06 Cost-Sharing Agreements

33.1-04-02-01. Purpose.

This chapter contains the procedures the department will generally follow when determining whether to list or delist a site. Such decisions are wholly within the department's discretion and do not convey any legal right or interest to any person.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

33.1-04-02-02. Eligibility.

The department may add a site to the North Dakota environmental priorities list on its own initiative or upon application from a person that is not a responsible person for the site. In determining whether to add a site to the North Dakota environmental priorities list, the department will consider the following criteria:

1. The contaminant of concern at the subject property should be identified. If no contaminant of concern has been identified, there should be at least one recognized environmental condition documented at the site.
2. The subject property must be assessed by the department to determine if the site conditions support the listing of the site, and to determine the priority of the listed site.
3. The subject property may not be eligible for, or should have exhausted, any other state or federal funding sources. Private funding sources may still be available.
4. The responsible party must be identified, if possible.
5. Any other information the department deems relevant.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

33.1-04-02-03. Adding sites to the North Dakota environmental priorities list.

1. The department may add eligible sites to the North Dakota environmental priorities list on a case-by-case basis.
2. The department shall complete a priority determination for a listed site. Sites that the department determines have a higher potential for environmental harm generally must be given higher priority for corrective action by the department, though the department may consider other factors such as local priorities.

3. The inclusion of a site on the North Dakota environmental priorities list does not guarantee any funding or corrective action will be completed.
4. The department will post on its website the North Dakota environmental priorities list and any revisions to the list. When a new site is listed, the department will post on its website an eligibility determination, priority determination, and site summary. The site summary must include:
 - a. The county in which the site is located;
 - b. The nearest incorporated city;
 - c. The name of the applicant, if applicable; and
 - d. Contact information, including the name, phone number, mailing address, and electronic mail address of the applicant point of contact, if applicable.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

33.1-04-02-04. Delisting sites.

The department may remove sites from the North Dakota environmental priorities list based on new information or revision of department priorities. Delisting does not relieve any person liable from the responsibility to complete corrective action or from compliance with any environmental law.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

33.1-04-02-05. Actions at listed sites.

The environmental quality restoration fund may be used to fund approvable actions at listed sites. The department has discretion to determine the amount of funding that will be used at a site and types of approvable actions that will be funded. The department may seek cost recovery from responsible parties. Listed sites will be addressed according to the site's ranking on the North Dakota environmental priorities list, but the department reserves the right at any time to:

1. Modify the order of processing, payment, and approval of activities; or
2. Modify the ranking of sites based on new information or revision of department priorities.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

33.1-04-02-06. Cost-sharing agreements.

The department may enter into a cost-sharing agreement with an owner of a listed site that is not a responsible party. Cost-sharing agreements involve the site owner conducting department-approved activities and receiving partial reimbursement from the department for the costs of those approved activities.

1. **Eligibility.** The following criteria must be met for a site owner to be eligible for a cost-sharing agreement:
 - a. The cost-sharing activities are approvable actions;

- b. The listed site owner has prepared a voluntary response action plan meeting the requirements of North Dakota Century Code section 23.1-10-15;
- c. The department and listed site owner have entered into a voluntary cleanup agreement under North Dakota Century Code section 23.1-10-15;
- d. The approvable actions will be conducted in accordance with the voluntary response action plan; and
- e. The department has no open enforcement actions involving the site owner or an entity controlled by the site owner.

2. **Agreement.** The department and a site owner may enter into a cost-sharing agreement if the eligibility requirements of subsection 1 are met. The cost-sharing agreement must include:

- a. A description of the approvable actions planned for the site;
- b. A cost-estimate for the approvable actions;
- c. Statement of maximum department contribution amount, not to exceed fifty percent of the total real cost of the approvable actions;
- d. Any terms or conditions required by the department to enter into the agreement; and
- e. A certificate of completion for the voluntary response actions issued to the listed site owner within an approved timeline.

3. **Violation of cost-sharing requirements.** The site owner shall repay cost-share funds to the department if:

- a. Response actions have been conducted in a way or manner that is not in compliance with the voluntary response action plan;
- b. The site owner has failed to comply with, or violated, the voluntary cleanup agreement;
- c. The site owner fails to comply with the terms and conditions of the cost-sharing agreement;
- d. The site owner's remedial actions cause, or contribute to, additional contamination of the listed property; or
- e. The site owner's remedial actions cause, or contribute to, contamination at properties other than the subject property.

History: Effective January 1, 2023.

General Authority: NDCC 23.1-10-03

Law Implemented: NDCC 23.1-10-02, 23.1-10-03

CHAPTER 33.1-10-01

33.1-10-01-13. Communications.

All communications and reports concerning this article and applications filed thereunder shall be addressed to the department as follows:

Mailing and shipping address:

Department of Environmental Quality
Division of ~~Air Quality~~ Waste Management
~~918 East Divide Avenue~~ 4201 Normandy Street, Second Floor
Bismarck, ND ~~58501-1947~~ 58503-1324

Telephone ~~(701)328-5188~~ (701)328-5166
Facsimile (Fax) ~~(701)328-5185~~ (701)328-5200
24-hour emergency in state 800-472-2121; out-of-state (701)328-9921

History: Effective January 1, 2019; amended effective January 1, 2023.
General Authority: NDCC 23.1-03-04, ~~28-32-02~~; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-03-07; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-03.1

33.1-10-03.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 30.

10 Code of Federal Regulations 30.1, 30.2, 30.3, 30.4, 30.7, 30.9, 30.10, 30.11, 30.12, 30.13, 30.14, 30.15, 30.18, 30.19, 30.20, 30.21, 30.22, 30.31, 30.32, 30.33, 30.34, 30.35, 30.36, 30.37, 30.38, 30.39, 30.41, 30.50, 30.51, 30.52, 30.53, 30.61, 30.62, 30.70, 30.71, and 30.72 and appendix A through appendix E to part 30 are adopted by reference as they exist on ~~January 14, 2019~~ [May 9, 2022](#), with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations 30.21(c), 30.3(b)(1), 30.3(b)(2), 30.3(b)(3), 30.34(d), 30.34(e)(1), 30.34(e)(3), 30.41(b)(6), paragraph (2) of the definition of "commencement of construction", and paragraph (9)(ii) of the definition of "construction".
2. Requirements in 10 Code of Federal Regulations part 30 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "NRC regional office", or "administrator of the appropriate regional office" appear in 10 Code of Federal Regulations part 30, substitute the words "department of environmental quality" except when used in 10 Code of Federal Regulations 30.12, 30.21(c), [and 30.34\(h\)\(1\)](#), ~~and 30.50(e)(1)~~.
4. 10 Code of Federal Regulations 30.7 employee protection also applies to violations of North Dakota Century Code chapters 23.1-02 and 23.1-03.
5. "Act" includes North Dakota Century Code chapters 23.1-02 and 23.1-03.
6. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part 30.
7. North Dakota state form number 8414, "notice to employees", must be posted instead of United States nuclear regulatory commission form 3 that is specified in 10 Code of Federal Regulations part 30.
8. The department of environmental quality radioactive material license replaces NRC form 374, "byproduct material license", as specified in 10 Code of Federal Regulations part 30.
9. North Dakota state form number 18941, "certificate: disposition of radioactive material", must be used instead of NRC form 314 as specified in 10 Code of Federal Regulations part 30.
10. For references to 10 Code of Federal Regulations part 170, see chapter 33.1-10-11 for applicable fee schedules.

History: Effective January 1, 2019; amended effective July 1, 2021; [January 1, 2023](#).

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-04.2

33.1-10-04.2-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 20.

10 Code of Federal Regulations 20.1001, 20.1002, 20.1003, 20.1004, 20.1005, 20.1008, 20.1101, 20.1201, 20.1202, 20.1203, 20.1204, 20.1206, 20.1207, 20.1208, 20.1301, 20.1302, 20.1401, 20.1402, 20.1403, 20.1404, 20.1405, 20.1406, 20.1501, 20.1502, 20.1601, 20.1602, 20.1701, 20.1702, 20.1703, 20.1704, 20.1705, 20.1801, 20.1802, 20.1901, 20.1902, 20.1903, 20.1904, 20.1905, 20.1906, 20.2001, 20.2002, 20.2003, 20.2004, 20.2005, 20.2006, 20.2007, 20.2008, 20.2101, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2205, 20.2206, 20.2207, 20.2301, and 20.2302, appendix A through C to part 20, appendix E to part 20, and appendix G to part 20 are adopted by reference as they exist on ~~December 1, 2015~~ May 9, 2022, with the following exceptions:

1. Not adopted by reference are 10 Code of Federal Regulations (CFR) 20.1406(b), 20.1905(g), 20.2203(c), and 20.2206(a)(1), (a)(3), (a)(4), and (a)(5).
2. All of the requirements in chapter 33.1-10-04.2 apply to both licensees and registrants. A reference in 10 CFR part 20 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", a reference to "licensed material(s)" includes "registered source of radiation", and a reference to "licensed radioactive material" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33.1-10 and North Dakota Century Code chapter 23.1-03. "Registration" means the notification of the department of environmental quality of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23.1-02.
3. Where the words "NRC", "commission", "administrator of the appropriate NRC regional office", "administrator of the nearest commission regional office", or "NRC regional office" appear in 10 CFR part 20, substitute the words "department of environmental quality".
4. Requirements in 10 CFR part 20 that apply to "byproduct material" also apply to naturally occurring or accelerator produced radioactive material.
5. "Act" includes North Dakota Century Code chapters 23.1-02 and 23.1-03.
6. North Dakota state form number 19443, "occupational radiation exposure history", must be used instead of NRC form 4 as specified in 10 CFR part 20.
7. North Dakota state form number 8416, "current occupational radiation exposure", must be used instead of NRC form 5 as specified in 10 CFR part 20.
8. NRC form 748 shall not be used as described in 10 CFR part 20.
9. The words "in the Federal Register and" shall be omitted from 10 CFR 20.1405(b).

History: Effective January 1, 2019; amended effective January 1, 2023.

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-05.1

33.1-10-05.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 34.

10 Code of Federal Regulations 34.1, 34.3, 34.11, 34.13, 34.20, 34.21, 34.23, 34.25, 34.27, 34.29, 34.31, 34.33, 34.35, 34.41, 34.42, 34.43, 34.45, 34.46, 34.47, 34.49, 34.51, 34.53, 34.61, 34.63, 34.65, 34.67, 34.69, 34.71, 34.73, 34.75, 34.79, 34.81, 34.83, 34.85, 34.87, 34.89, 34.101, and 34.111 and appendix A to part 34 are adopted by reference as they exist on ~~July 30, 2018~~ [November 16, 2020](#), with the following exceptions:

1. All of the requirements in chapter 33.1-10-05.1 apply to both licensees and registrants. A reference in 10 Code of Federal Regulations part 34 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", and a reference to "licensed material" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33.1-10 and North Dakota Century Code chapter 23.1-03. "Registration" means the notification of the department of environmental quality of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23.1-02.
2. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "NRC regional administrator", "NRC regional office", "administrator of the appropriate nuclear regulatory commission's regional office", or "NRC's office of nuclear material safety and safeguards, division of industrial and medical nuclear safety" appear in 10 Code of Federal Regulations part 34, substitute the words "department of environmental quality".
3. Requirements in 10 Code of Federal Regulations part 34 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
4. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part 34.
5. For references to 10 Code of Federal Regulations parts 170 and 171, see chapter 33.1-10-11 for applicable fee schedules.

History: Effective January 1, 2019; amended effective July 1, 2021; [January 1, 2023](#).

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-07.2

33.1-10-07.2-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 35.

10 Code of Federal Regulations 35.1, 35.2, 35.5, 35.6, 35.7, 35.10, 35.11, 35.12, 35.13, 35.14, 35.15, 35.18, 35.19, 35.24, 35.26, 35.27, 35.40, 35.41, 35.49, 35.50, 35.51, 35.55, 35.57, 35.59, 35.60, 35.61, 35.63, 35.65, 35.67, 35.69, 35.70, 35.75, 35.80, 35.92, 35.100, 35.190, 35.200, 35.204, 35.290, 35.300, 35.310, 35.315, 35.390, 35.392, 35.394, 35.396, 35.400, 35.404, 35.406, 35.410, 35.415, 35.432, 35.433, 35.457, 35.490, 35.491, 35.500, 35.590, 35.600, 35.604, 35.605, 35.610, 35.615, 35.630, 35.632, 35.633, 35.635, 35.642, 35.643, 35.645, 35.647, 35.652, 35.655, 35.657, 35.690, 35.1000, 35.2024, 35.2026, 35.2040, 35.2041, 35.2060, 35.2061, 35.2063, 35.2067, 35.2070, 35.2075, 35.2080, 35.2092, 35.2204, 35.2310, 35.2404, 35.2406, 35.2432, 35.2433, 35.2605, 35.2610, 35.2630, 35.2632, 35.2642, 35.2643, 35.2645, 35.2647, 35.2652, 35.2655, 35.3045, 35.3047, 35.3067, and 35.3204 are adopted by reference as they exist on ~~January 14, 2019~~September 8, 2021, with the following exceptions:

1. Not adopted by reference are 10 CFR 35.11(c)(1) and 35.13(a)(1).
2. Requirements in 10 Code of Federal Regulations part 35 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "NRC regional office", "NRC operations center", or "director, office of nuclear material safety and safeguards" appear in 10 Code of Federal Regulations part 35, substitute the words "department of environmental quality", except when referencing licenses or permits issued by the United States nuclear regulatory commission, master material licenses issued by the United States nuclear regulatory commission, specialty boards recognized by the United States nuclear regulatory commission, the medical uses licensee toolkit web page, and definition of "agreement state" in 35.2.
4. "Act" includes North Dakota Century Code chapters 23.1-02 and 23.1-03.
5. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part ~~34~~35.
6. For references to 10 Code of Federal Regulations parts 170 and 171, see chapter 33.1-10-11 for applicable fee schedules.

History: Effective January 1, 2019; amended effective July 1, 2021; January 1, 2023.

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-10.1

33.1-10-10.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 19.

10 Code of Federal Regulations 19.1, 19.2, 19.3, 19.5, 19.11, 19.12, 19.13, 19.14, 19.15, 19.16, 19.17, 19.18, 19.20, 19.31, and 19.32 are adopted by reference as they exist on ~~December 1, 2015~~November 16, 2020, with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations 19.14(a).
2. All of the requirements in chapter 33.1-10-10.1 apply to both licensees and registrants. A reference in 10 Code of Federal Regulations part 19 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", and a reference to "licensed radioactive material" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33.1-10 and North Dakota Century Code chapter 23.1-03. "Registration" means the notification of the department of environmental quality of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23.1-02.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "administrator of the appropriate commission regional office", "administrator of the appropriate regional office", "regional office administrator", "executive director for operations", "regional administrator of the appropriate United States nuclear regulatory commission regional office", or "agency" appear in 10 Code of Federal Regulations part 19, substitute the words "department of environmental quality".
4. "Act" includes North Dakota Century Code chapters 23.1-02 and 23.1-03.
5. State form number 8414, "notice to employees", must be posted in place of United States nuclear regulatory commission form 3 that is specified in 10 Code of Federal Regulations part 19.
6. Where 10 Code of Federal Regulations part 19 specifies contacting the United States nuclear regulatory commission, contact the department of environmental quality.

History: Effective January 1, 2019; amended effective January 1, 2023.

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-11

33.1-10-11-04. Payment of fees.

The following fees are nonrefundable:

1. **License and registration fees.** The appropriate licensing or registration fee shall accompany the application for licensure or registration when filed with the department. For new radioactive material licenses, the application fee is equal to the appropriate annual fee.
2. **Amendment fees.** The amendment fee given in appendix A category 24 shall accompany the application for amendment when filed with the department.
3. **Reciprocity fee.** The appropriate reciprocity fee shall accompany the written notification as required in chapters 33.1-10-03.1 and 33.1-10-02.
4. **Special project fees.** Fees for special projects are payable upon notification by the department when the review of the project is completed. Special projects mean those projects submitted to the department for review and for which specific fees are not prescribed in this chapter. Special project fees will be based upon the current professional staff hourly rate (thirty-three percent of the current nuclear regulatory commission rate listed in 10 CFR 170).
5. **Annual fees.** Annual fees are required to be paid by all radioactive material licensees no later than January first of each year the license is active, except that the annual fee due on January first of the year following the issuance of a new license shall be prorated to the number of months the license was in effect the first calendar year (example: for a new license issued in May the annual fee due January first would be seven-twelfths [June-December] of the annual fee listed in appendix A).
6. **Inspection and survey fees.** Fees for regulatory inspections and surveys of North Dakota licensees are included in the registration or annual fees for each registration or license type. Nonroutine inspections will require the nonroutine inspection fee to be paid upon notification by the department when the inspection has been completed.
7. **Annual fees for small entities.** If a licensee qualifies as a small entity and provides the department with the proper certification, the small entity fee of sixty percent of the applicable annual fee listed in appendix A shall be paid.
 - a. "Small business" means a business entity, including its affiliates, which:
 - (1) Is independently owned and operated; and
 - (2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;
 - b. "Small entity" includes small business, small organization, and small political subdivision;
 - c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field;
 - d. "Small political subdivision" means a political subdivision with a population of less than five thousand;
 - e. A licensee who seeks to establish status as a small entity for purposes of paying the fees required under this chapter shall file a certification statement with the department. The licensee shall:

- (1) Certify, on the business's letterhead, that the business meets the conditions in this subsection;
 - (2) Sign the certification as the chief executive officer of the business or as an official designee; and
 - (3) Have the certification notarized.
- f. A licensee who seeks to qualify as a small entity shall submit the certification with the reduced annual fee payment; and
 - g. For purposes of this chapter, the licensee shall submit a new certification with its annual fee payment each year.
8. **Method of payment.** Fee payments shall be by check, draft, or money order made payable to the department of environmental quality.
 9. **Submittal of application and fee payment.** The application for licensure or registration shall be accompanied by the fee payment and shall be submitted to:

Department of Environmental Quality
Division of ~~Air Quality~~ Waste Management
~~918 East Divide Avenue~~ 4201 Normandy Street, Second Floor
Bismarck, ND ~~58501-1947~~ 58503-1324

History: Effective January 1, 2019; amended effective January 1, 2023.

General Authority: NDCC 23.1-03-04, 23.1-03-09; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-04, 23.1-03-09; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-12.1

33.1-10-12.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 39.

10 Code of Federal Regulations 39.1, 39.2, 39.11, 39.13, 39.15, 39.17, 39.31, 39.33, 39.35, 39.37, 39.39, 39.41, 39.43, 39.45, 39.47, 39.49, 39.51, 39.53, 39.55, 39.61, 39.63, 39.65, 39.67, 39.69, 39.71, 39.73, 39.75, 39.77, and 39.91 are adopted by reference as they exist on ~~October 1, 2015~~June 16, 2020, with the following exceptions:

1. All of the requirements in chapter 33.1-10-12.1 apply to both licensees and registrants. A reference in 10 Code of Federal Regulations part 39 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", a reference to "licensed material" includes "registered source of radiation", and a reference to "licensed radioactive materials" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33.1-10 and North Dakota Century Code chapter 23.1-03. "Registration" means the notification of the department of environmental quality of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23.1-02.
2. Where the words "NRC", "commission", or "NRC regional office" appear in 10 Code of Federal Regulations part 39, substitute the words "department of environmental quality".
3. Requirements in 10 Code of Federal Regulations part 39 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
4. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part 39.
5. For references to 10 Code of Federal Regulations part 170, see chapter 33.1-10-11 for applicable fee schedules.

History: Effective January 1, 2019; amended effective January 1, 2023.

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-13.1

33.1-10-13.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 71.

10 Code of Federal Regulations 71.0, 71.3, 71.4, 71.5, 71.7, 71.8, 71.9, 71.10, 71.12, 71.13, 71.14, 71.15, 71.17, 71.21, 71.22, 71.23, 71.47, 71.81, 71.83, 71.85, 71.87, 71.88, 71.89, 71.91, 71.93, 71.95, 71.97, 71.101, 71.103, 71.105, 71.106, 71.127, 71.129, 71.131, 71.133, 71.135, and 71.137 and appendix A to part 71 are adopted by reference as they exist on December 30, ~~2019~~2021, with the following exceptions:

1. Not adopted by reference are 10 Code of Federal Regulations 71.0(d), 71.14(b), 71.85(a)-(c), 71.91(b), 71.101(c)(2), (d), and (e).
2. Requirements in 10 Code of Federal Regulations part 71 that apply to "licensed material" or "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", or "administrator of the appropriate regional office" appear in 10 Code of Federal Regulations part 71, substitute the words "department of environmental quality" except when used in 10 Code of Federal Regulations 71.5(b), 71.10, 71.17(c)(3) and (e), 71.85(c), 71.88(a)(4), 71.93(c), 71.95, 71.97(c), and (c)(3)(iii), and (f).
4. Where the words "ATTN: Document Control Desk, Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards" appear in 10 Code of Federal Regulations 71.101(c)(1), substitute the words "department of environmental quality".
5. The terms "certificate of compliance, compliance holder or applicant" used in 10 Code of Federal Regulations 71.91(c) and (d), 71.101(a)-(c), 71.103(a), and 71.135 apply only to the United States nuclear regulatory commission (NRC) as the NRC is the sole authority for issuing a package's certificate of compliance.
6. 10 Code of Federal Regulations 71.9 employee protection also applies to violations of North Dakota Century Code chapters 23.1-02 and 23.1-03.
7. State form number 8414, "notice to employees", must be posted instead of United States nuclear regulatory commission form 3 that is specified in 10 Code of Federal Regulations part 71.

History: Effective January 1, 2019; amended effective July 1, 2021; January 1, 2023.

General Authority: NDCC 28-32-02; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 28-32-02

CHAPTER 33.1-10-14.1

33.1-10-14.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 36.

10 Code of Federal Regulations 36.1, 36.2, 36.11, 36.13, 36.15, 36.17, 36.19, 36.21, 36.23, 36.25, 36.27, 36.29, 36.31, 36.33, 36.35, 36.37, 36.39, 36.41, 36.51, 36.53, 36.55, 36.57, 36.59, 36.61, 36.63, 36.65, 36.67, 36.69, 36.81, and 36.83 are adopted by reference as they exist on ~~October 1, 2015~~June 16, 2020, with the following exceptions:

1. Not adopted by reference is paragraph (2) of the definition of "commencement of construction", and paragraph (9)(ii) of the definition "construction".
2. Requirements in 10 Code of Federal Regulations part 36 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", or "NRC regional office" appear in 10 Code of Federal Regulations part 36, substitute the words "department of environmental quality".
4. "Act" includes North Dakota Century Code chapters 23.1-02 and 23.1-03.
5. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part 36.
6. For references to 10 Code of Federal Regulations parts 170 and 171, see chapter 33.1-10-11 for applicable fee schedules.

History: Effective January 1, 2019; amended effective January 1, 2023.

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-16

33.1-10-16-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 40.

10 Code of Federal Regulations 40.1, 40.2, 40.3, 40.4, 40.7, 40.9, 40.10, 40.11, 40.12, 40.13, 40.14, 40.20, 40.21, 40.22, 40.25, 40.26, 40.31, 40.32, 40.34, 40.35, 40.36, 40.41, 40.42, 40.43, 40.44, 40.45, 40.46, 40.51, 40.54, 40.55, 40.60, 40.61, 40.62, 40.63, 40.65, and 40.71 and appendix A to part 40 are adopted by reference as they exist on ~~December 30, 2019~~[May 9, 2022](#), with the following exceptions:

1. Not adopted by reference are 10 Code of Federal Regulations 40.12(b); 40.31(g), (j), (k), and (l); 40.32(d), (e), and (g); 40.41(d), (e)(1), (e)(3), and (g); 40.51(b)(6); appendix A, criterion 11A through F and criterion 12; paragraph (2) of the definition of "commencement of construction"; and paragraph (9)(ii) of the definition of "construction".
2. Requirements in 10 Code of Federal Regulations part 40 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "NRC regional administrator", or "administrator of the appropriate regional office" appear in 10 Code of Federal Regulations part 40, substitute the words "department of environmental quality" except when used in 10 Code of Federal Regulations 40.11.
4. 10 Code of Federal Regulations part 40 employee protection also applies to violations of North Dakota Century Code chapters 23.1-02 and 23.1-03.
5. "Act" includes North Dakota Century Code chapters 23.1-02 and 23.1-03.
6. North Dakota state form number 8414, "notice to employees", must be posted instead of NRC form 3 that is specified in 10 Code of Federal Regulations part 40.
7. North Dakota state form number 16092, "registration certificate: use of depleted uranium under general license", must be used instead of nuclear regulatory commission form 244 that is specified in 10 Code of Federal Regulations part 40.
8. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part 40.
9. North Dakota state form number 18941, "certificate: disposition of radioactive material", must be used instead of NRC form 314 as specified in 10 Code of Federal Regulations part 40.
10. For references to 10 Code of Federal Regulations parts 170 and 171, see chapter 33.1-10-11 for applicable fee schedules.

History: Effective January 1, 2019; amended effective July 1, 2021; [January 1, 2023](#).

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-17

33.1-10-17-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 70.

10 Code of Federal Regulations 70.1, 70.2, 70.3, 70.4, 70.7, 70.9, 70.10, 70.11, 70.12, 70.17, 70.18, 70.19, 70.20, 70.21, 70.22, 70.23, 70.25, 70.31, 70.32, 70.33, 70.34, 70.35, 70.36, 70.38, 70.39, 70.41, 70.42, 70.50, 70.51, 70.56, and 70.81 are adopted by reference as they exist on ~~December 21, 2018~~[May 9, 2022](#), with the following exceptions:

1. The following are not adopted by reference: 10 Code of Federal Regulations 70.1(c), (d), and (e); 70.20a; 70.20b; 70.21(a)(1), (c), (f), (g), and (h); 70.22(b), (c), (f), (g), (h), (i), (j), (k), (l), (m), and (n); 70.23(a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), and (b); 70.23a; 70.25(a)(1); 70.31(c), (d), and (e); 70.32(a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (b)(1), (b)(3), (b)(4), (c), (d), (e), (f), (g), (h), (i), (j), and (k); 70.42(b)(6); 70.51(c); paragraph (2) of the definition of "commencement of construction"; and paragraph (9)(ii) of the definition of "construction".
2. Requirements in 10 Code of Federal Regulations part 70 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "NRC regional administrator", "NRC regional office", "administrator of the appropriate nuclear regulatory commission's regional office", "administrator of the appropriate regional office", or "nuclear regulatory commission's office of nuclear material safety and safeguards, division of industrial and medical nuclear safety" appear in 10 Code of Federal Regulations part 70, substitute the words "department of environmental quality".
4. 10 Code of Federal Regulations 70.7 employee protection also applies to violations of North Dakota Century Code chapters 23.1-02 and 23.1-03.
5. "Act" includes North Dakota Century Code chapters 23.1-02 and 23.1-03.
6. North Dakota state form number 8418, "application for radioactive material license", must be used instead of nuclear regulatory commission form 313 as specified in 10 Code of Federal Regulations part 70.
7. North Dakota state form number 8414, "notice to employees", must be posted instead of United States nuclear regulatory commission form 3 that is specified in 10 Code of Federal Regulations part 70.
8. For references to 10 Code of Federal Regulations part 170, see chapter 33.1-10-11 for applicable fee schedules.

History: Effective January 1, 2019; amended effective July 1, 2021; [January 1, 2023](#).

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-18

33.1-10-18-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 31.

10 Code of Federal Regulations 31.1, 31.2, 31.3, 31.5, 31.6, 31.7, 31.8, 31.9, 31.10, 31.11, and 31.12 are adopted by reference as they exist on October 1, 2015, with the following exceptions:

1. Not adopted by reference are 10 Code of Federal Regulations 31.3(b) and (c) and 31.6(a).
2. Requirements in 10 Code of Federal Regulations part 31 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", or "director of nuclear material safety and safeguards" appear in 10 Code of Federal Regulations part 31, substitute the words "department of environmental quality" except when used in 10 Code of Federal Regulations 31.8(c)(2) and 31.11(d)(2).
4. Reporting required in 10 Code of Federal Regulations 31.5(c)(5), 31.5(c)(8)(ii), 31.5(c)(9)(i), 31.5(c)(11), and 31.5(c)(14) shall be submitted to the department of environmental quality as follows:
 - a. By mail addressed to:

Radiation Control Program
Department of Environmental Quality
~~918 East Divide Avenue~~4201 Normandy Street, Second Floor
Bismarck, ND ~~58501-1947~~58503-1324
 - b. By hand delivery to:

Radiation Control Program
Department of Environmental Quality
~~915 East Divide Avenue~~4201 Normandy Street, Second Floor
Bismarck, ND
 - c. By electronic submission to ram@nd.gov. Electronic submissions must be made in a manner that enables the department of environmental quality to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time.
5. North Dakota state form number 8423, "certificate - in vitro testing with radioactive material under general license", must be used instead of nuclear regulatory commission form 483 as specified in 10 Code of Federal Regulations part 31.
6. References in 10 Code of Federal Regulations part 31 to specific licenses issued by an agreement state also include specific licenses issued by the United States nuclear regulatory commission.

History: Effective January 1, 2019; amended effective January 1, 2023.

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-20

33.1-10-20-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 32.

10 Code of Federal Regulations 32.1, 32.2, 32.3, 32.13, 32.17, 32.24, 32.51, 32.51(a), 32.52, 32.53, 32.54, 32.55, 32.56, 32.57, 32.58, 32.59, 32.61, 32.62, 32.71, 32.72, 32.74, 32.101, 32.102, 32.103, 32.110, 32.201, 32.210, and 32.301 are adopted by reference as they exist on ~~January 14, 2019~~September 8, 2021, with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations 32.1(c)(1).
2. Requirements in 10 Code of Federal Regulations part 32 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "NRC regional office", or "director of nuclear material safety and safeguards" appear in 10 Code of Federal Regulations part 32, substitute the words "department of environmental quality" except when used in 32.51(a)(3)(iii), 32.54(a), 32.58, 32.71(d), 32.72(b)(5), and 32.74(a)(3).
4. Reporting required in 10 Code of Federal Regulations 32.56(a) shall be submitted to the department of environmental quality as follows:
 - a. By mail addressed to:

Radiation Control Program
Department of Environmental Quality
~~918 East Divide Avenue~~4201 Normandy Street, Second Floor
Bismarck, ND ~~58501-1947~~58503-1324
 - b. By hand delivery to:

Radiation Control Program
Department of Environmental Quality
~~918 East Divide Avenue~~4201 Normandy Street, Second Floor
Bismarck, ND
 - c. By electronic submission to ram@nd.gov. Electronic submissions must be made in a manner that enables the department of environmental quality to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time.
5. North Dakota state form number 8418, "application for radioactive material license", must be used instead of nuclear regulatory commission form 313 as specified in 10 Code of Federal Regulations part 32.
6. For references to 10 Code of Federal Regulations part 170, see chapter 33.1-10-11 for applicable fee schedules.

History: Effective January 1, 2019; amended effective July 1, 2021; January 1, 2023.

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04; S.L. 2017, ch. 199, § 18

CHAPTER 33.1-10-22

33.1-10-22-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 37.

10 Code of Federal Regulations 37.1, 37.3, 37.5, 37.11, 37.21, 37.23, 37.25, 37.27, 37.29, 37.31, 37.33, 37.41, 37.43, 37.45, 37.47, 37.49, 37.51, 37.53, 37.55, 37.57, 37.71, 37.73, 37.75, 37.77, 37.79, 37.81, 37.101, 37.103, 37.105, and appendix A to part 37 are adopted by reference as they exist on December 30, ~~2019~~2021, with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations (CFR) 37.11(b) and 37.43(d)(9).
2. All of the requirements in chapter 33.1-10-22 apply to both licensees and registrants. A reference in 10 CFR part 37 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", a reference to "licensed material(s)" includes "registered source of radiation" and a reference to "licensed radioactive material" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33.1-10 and North Dakota Century Code chapter 23.1-03. "Registration" means the notification of the department of environmental quality of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23.1-02.
3. Where the word "NRC" appears in 10 CFR 37.31(d), 37.43(c)(3)(iii), 37.57(a), 37.57(c), 37.77 [with the exception of "the NRC's Web site" in 37.77(a)(1)], and 37.81(g), substitute the words "department of environmental quality".
4. Where the word "Commission" appears in 10 CFR 37.5 (definitions of "byproduct material" and "person"), 37.11(a), 37.43(a)(3), 37.43(c)(1)(ii), 37.101, 37.103, and 37.105, substitute the words "department of environmental quality".
5. Where the words "NRC regional office" appear in 10 CFR 37.41(a)(3) and 37.81, substitute the words "department of environmental quality".
6. Where the words "appropriate NRC regional office listed in § 30.6(a)(2) of this chapter" appear in 10 CFR 37.45(b), substitute the words "department of environmental quality".
7. Where the words "NRC's Operational Center (301-816-5100)" appear in 10 CFR 37.57(a), 37.57(b), and 37.81, substitute the words "department of environmental quality".
8. Where the words "NRC's Operational Center" appear in 10 CFR 37.81, substitute the words "department of environmental quality".
9. Where the words "NRC's Director, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001. The notification to the NRC may be made by email to RAMQC_SHIPMENTS@nrc.gov or by fax to 301-816-5151" appear in 10 CFR 37.77(a)(1), substitute the words "department of environmental quality".
10. Where the words "NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.77(c)(1), substitute the words "department of environmental quality".
11. Where the words "NRC's Director, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.77(c)(2) and 37.77(d), substitute the words "department of environmental quality".

12. Where the words "Director, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.81(g), substitute the words "department of environmental quality".
13. Requirements in 10 CFR part 37 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
14. "Act" includes North Dakota Century Code chapters 23.1-02 and 23.1-03.

History: Effective January 1, 2019; amended effective July 1, 2021; [January 1, 2023](#).

General Authority: NDCC 23.1-03-04; S.L. 2017, ch. 199, § 1

Law Implemented: NDCC 23.1-03-03, 23.1-03-04; S.L. 2017, ch. 199, § 18

TITLE 55
NURSING HOME ADMINISTRATORS, BOARD OF EXAMINERS FOR

JANUARY 2023

CHAPTER 55-02-01

55-02-01-07. Requirements for initial licensure.

A person applying for initial licensure must meet the following requirements:

1. The person is at least eighteen years of age and of good moral character.
2. The person has a baccalaureate degree from an accredited college or university, or has an associate degree from an accredited college or university and has practiced as a licensed nursing home administrator in any jurisdiction for at least five of the last six years.
3. The person has completed one thousand hours of a board-approved administrator-in-training program, practiced as a licensed nursing home administrator in any jurisdiction for at least two years preceding the application, is certified by the American college of health care administrators as a nursing home administrator, or has met the qualifications for the health services executive license as established by the national association of long term care administrator boards, which are in effect on January 1, 2017.
4. If the person has not been licensed in another state and has not been practicing as an administrator of record in another state for five of the last six years, the person must pass the examinations required by section 55-02-01-10 within twenty-four months before or after the date the person applies for initial licensure.

History: Amended effective July 1, 1979; February 1, 1993; June 1, 1996; December 1, 1998; December 1, 2002; July 1, 2010; January 1, 2017; January 1, 2023.

General Authority: NDCC 43-34-03, 43-34-04, 43-34-08, 43-34-09

Law Implemented: NDCC 43-34-03, 43-34-09, 43-34-12

55-02-01-12. Continuing education.

1. A licensee with an active license must obtain twenty hours of continuing education each calendar year following the first calendar year of licensure. During the first calendar year of licensure, a licensee with an active license must obtain:
 - a. Twenty hours of continuing education if licensed before April first;
 - b. Fifteen hours of continuing education if licensed on or after April first, but before July first;
or
 - c. Ten hours of continuing education if licensed on or after July first, but before October first; or

d. Five hours of continuing education if licensed on or after October first.

2. Continuing education hours must be obtained from providers approved by the board.

3. ~~The maximum number of continuing education hours a licensee can obtain through online or internet sources to satisfy the requirements of this section is limited to ten.~~

~~4.~~ Documentation of continuing education must be submitted with a renewal application.

4. The board shall consider exceptions to the continuing education requirements for reasons, including military services, medical hardships, or circumstances beyond the administrator's reasonable control.

History: Amended effective February 1, 1993; December 1, 1998; December 1, 2002; January 1, 2017; January 1, 2023.

General Authority: NDCC 43-34-03, 43-34-04, ~~43-34-09~~

Law Implemented: NDCC 43-34-09, ~~43-34-10~~

TITLE 67
PUBLIC INSTRUCTION, SUPERINTENDENT OF

JANUARY 2023

ARTICLE 67-16
ALTERNATIVE EDUCATION ~~PROGRAM~~

Chapter
67-16-01 Alternative ~~Education Program~~ High Schools

CHAPTER 67-16-01
ALTERNATIVE ~~EDUCATION PROGRAM~~ HIGH SCHOOLS

Section
67-16-01-01 Definition and Eligibility
67-16-01-02 Applications
67-16-01-03 Certification
67-16-01-04 Courses
67-16-01-05 Students
67-16-01-06 Monitoring
67-16-01-07 Cooperative Alternative Programs [Repealed]
67-16-01-08 Payments [Repealed]

67-16-01-01. ~~Eligibility~~ Definition and eligibility.

For purposes of this chapter, "alternative high school" means a school, or alternative school within the same building of an existing school, created for students completing required coursework leading to high school graduation through methods apart from the traditional high school model. Any public school district in North Dakota may apply to the superintendent of public instruction for establishment of an alternative ~~education program~~ high school for students from the ages of sixteen to twenty-one ~~who have dropped out of school~~. The alternative ~~programming~~ high school shall be under the administration of a public school district.

History: Effective January 1, 2000; amended effective January 1, 2023.

General Authority: NDCC ~~15-40.1-07.2~~ 15.1-02-11, 15.1-27-03.1(1)(e), 28-32-02

Law Implemented: NDCC ~~15-40.1-07.2~~ 15.1-02-11, 15.1-27-03.1(1)(e)

67-16-01-02. Applications.

~~Application forms~~ Applications provided by the department of public instruction require the following information:

1. Name and address of the high school district through which the alternative high school ~~program~~ is provided.

2. Names and addresses of any school districts that have entered into cooperative agreements approved by the department of public instruction and will be providing authorization to students in their district to attend this alternative ~~program~~high school.
3. A description of the alternative ~~program~~high school as follows:
 - a. The setting and location of the ~~program~~alternative high school, including the schedule that the alternative high school will be available to students.
 - b. Information on the staffing of the alternative ~~program~~high school.
 - c. ~~Instruction strategies to be utilized~~Detailed description of the delivery model and instructional supports.
 - d. ~~A schedule indicating the time or times of day the program will be available to students.~~
 - ~~e. A detailed description of the curriculum to be provided.~~
 - ~~f. Other descriptions~~Descriptions or explanations of what makes the ~~program~~alternative high school different from the traditional high school model.

History: Effective January 1, 2000; amended effective January 1, 2023.

General Authority: NDCC ~~15-40-1-07.2~~15.1-02-11, 15.1-27-03.1(1)(e), 28-32-02

Law Implemented: NDCC ~~15-40-1-07.2~~15.1-02-11, 15.1-27-03.1(1)(e)

67-16-01-03. Certification.

The school district must certify that the alternative ~~program~~high school will be in compliance with the provisions of statute by providing the signature of the board chairperson and the school district superintendent.

History: Effective January 1, 2000; amended effective January 1, 2023.

General Authority: NDCC ~~15-40-1-07.2~~15.1-02-11, 15.1-06-06, 28-32-02

Law Implemented: NDCC ~~15-40-1-07.2, 15-40-2-04~~15.1-02-11, 15.1-06-06

67-16-01-04. Courses.

If an alternative ~~education program~~high school is authorized by the superintendent of public instruction under this chapter, courses in the alternative ~~education program~~high school need not meet the minimum curriculum in North Dakota Century Code section 15.1-21-02, but all ~~program~~courses must lead toward graduation for each of the participants.

History: Effective January 1, 2000; amended effective April 1, 2010; January 1, 2023.

General Authority: NDCC 15.1-02-11, 28-32-02

Law Implemented: NDCC ~~15.1-09-03,~~ 15.1-21-02(7), ~~15.1-27-03.1~~15.1-27-03.1(1)(e)

67-16-01-05. Students.

Students must be from the ages of sixteen to twenty-one ~~and have been dropped from the regular school membership~~ to be reported for foundation aid payments in the alternative ~~program~~high school.

History: Effective January 1, 2000; amended effective January 1, 2023.

General Authority: NDCC ~~15-40-1-07.2~~15.1-02-11, 15.1-27-03.1(1)(e), 28-32-02

Law Implemented: NDCC ~~15-40-1-07.2~~15.1-02-11, 15.1-27-03.1(1)(e)

67-16-01-06. Monitoring.

The department of public instruction will monitor alternative ~~program~~high schools by reviewing annual documentation including fall reports and completion rate data:

1. ~~Certificate of~~Annual compliance report.
2. School calendar.
3. MIS03 certified personnel record.
4. ~~Pupil membership~~Enrollment report.

History: Effective January 1, 2000; amended effective January 1, 2023.

General Authority: NDCC ~~15-40.1-07.2~~15.1-02-11, 15.1-06-06, 28-32-02

Law Implemented: NDCC ~~15-40.1-06.4, 15-40.1-07.2~~15.1-02-11, 15.1-06-06

67-16-01-07. Cooperative alternative programs.

Repealed effective January 1, 2023.

~~— School districts may develop cooperative programs with other school districts to provide access to courses for as many students as possible. Tuition agreements must be completed and approved by the districts involved in the cooperative alternative program. No written agreement is necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged.~~

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

~~**General Authority:** NDCC 15-40.1-07.2, 28-32-02~~

~~**Law Implemented:** NDCC 15-40.1-07.2, 15-40.2-04~~

67-16-01-08. Payments.

Repealed effective January 1, 2023.

~~— Foundation aid payments for high school students will be made based on days of membership in an approved alternative program. Proportionate foundation aid payments will be made for students enrolled in less than four units based on the number of units carried and the high school weighting factor.~~

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

~~**General Authority:** NDCC 15-40.1-07.2, 28-32-02~~

~~**Law Implemented:** NDCC 15-40.1-07, 15-40.1-07.2~~

CHAPTER 67-19-04

67-19-04-03. Submission of proposal.

1. Because of the dual nature of the kindergarten through grade twelve education coordination council review and department of public instruction approval, the department will act as a liaison between the schools and the kindergarten through grade twelve education coordination council. Proposals approved by the board of a school district or governing board of a nonpublic school must be submitted to the following address:

North Dakota Department of Public Instruction
Attn: North Dakota K-12 Education Coordination Council
600 East Boulevard Avenue, Department 201
Bismarck, ND 58505-0440

ndk12ecc@nd.gov

2. For educational opportunities ~~during the 2022-23 school year~~, proposals must be submitted to the director of the office of school approval and opportunity:

~~a. No earlier than January 23, 2022, or later than February 1, 2022; or~~

~~b. No earlier than May 23, 2022, and no later than June 1, 2022.~~

- ~~3. Beginning with the 2023-24 school year, proposals must be received by the director of the office of school approval and opportunity:~~

~~a. No earlier than October twenty-third and no later than November first of the preceding school year; or~~

~~b. No earlier than May twenty-third and no later than June first of the preceding school year~~
a minimum of ninety days before the beginning of instruction.

- 4.3. All proposals must include the local policy and the school board meeting minutes documenting the adoption of the local policy and the approval of the proposal from the sponsoring entity.

- 5.4. Upon receiving the proposal, the director of the office of school approval and opportunity shall submit the proposal to the president of the kindergarten through grade twelve education coordination council for review.

History: Effective January 1, 2022; amended effective January 1, 2023.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15.1-07-35

67-19-04-04. Review and approval of proposals.

1. Within ~~sixty~~thirty days of receiving the proposal, the superintendent of public instruction shall provide the members of the kindergarten through grade twelve education coordination council shall with the opportunity to review the proposal to ensure compliance with section 67-19-04-02 request further information as needed, and submit the proposal to the superintendent of public instruction to approve or deny the proposal. Members of the kindergarten through grade twelve education coordination council may provide feedback to the superintendent of public instruction.
2. Following review by the kindergarten through grade twelve education coordination council, the superintendent of public instruction shall approve or deny the proposal, in accordance with subsection 6 of North Dakota Century Code section 15.1-07-35.

3. In accordance with subsection 6 of North Dakota Century Code section 15.1-07-35, the department of public instruction shall notify boards of school districts and governing boards of nonpublic schools of their approval status.

History: Effective January 1, 2022; [amended effective January 1, 2023](#).

General Authority: NDCC 28-32-02

Law Implemented: NDCC 15.1-07-35

ARTICLE 67-32
CRITICAL RACE THEORY

Chapter
67-32-01 Local Policy for Curriculum Review

CHAPTER 67-32-01
LOCAL POLICY FOR CURRICULUM REVIEW

Section
67-32-01-01 Adoption of Local Policy for Curriculum Review

67-32-01-01. Adoption of local policy for curriculum review.

1. For purposes of this chapter, "critical race theory", as defined in North Dakota Century Code section 15.1-21-05.1, means the theory that racism is not merely the product of learned individual bias or prejudice, but that racism is systematically embedded in American society and the American legal system to facilitate racial inequality.
2. The board of each school district shall adopt a policy related to critical race theory, as defined in North Dakota Century Code section 15.1-21-05.1 and subsection 1.
3. A policy adopted under this section must:
 - a. Allow curriculum, resources, and instructional materials to be made available for public viewing upon request, and include the timeline involved in viewing materials;
 - b. Include the process or mechanism for curriculum, resources, and instructional materials to be viewed by the public;
 - c. Include the process for addressing issues found to violate North Dakota Century Code section 15.1-21-05.1 and subsection 1; and
 - d. State that the board of the school district shall ensure district-led or district-sponsored professional development complies with North Dakota Century Code section 15.1-21-05.1 and subsection 1.

History: Effective January 1, 2023.

General Authority: NDCC 15.1-21-05.1, 28-32-02

Law Implemented: NDCC 15.1-21-05.1

TITLE 69
PUBLIC SERVICE COMMISSION

JANUARY 2023

**ARTICLE 69-09
PUBLIC UTILITY DIVISION**

Chapter	
69-09-01	Standards of Service - Gas
69-09-02	Standards of Service - Electric
69-09-03	Pipeline Safety
69-09-04	Uniform Sign Standards - Railroad
69-09-05	Standards of Service - Telephone
69-09-05.1	Accounting Practices
69-09-06	Prohibition on Sale and Direct Industrial Use of Natural Gas for Outdoor Lighting [Repealed]
69-09-07	Small Power Production and Cogeneration
69-09-08	Renewable Electricity and Recycled Energy Tracking System
69-09-09	Wind Facility Decommissioning
69-09-10	Solar Facility Decommissioning
69-09-11	Common Pipeline Carriers
<u>69-09-12</u>	<u>Resource Plans and Cybersecurity</u>

CHAPTER 69-09-12
RESOURCE PLANS AND CYBERSECURITY

Section

<u>69-09-12-01</u>	<u>Definitions</u>
<u>69-09-12-02</u>	<u>Resource Plan Procedure</u>
<u>69-09-12-03</u>	<u>Resource Plan Attributes</u>
<u>69-09-12-04</u>	<u>Filing Requirements</u>
<u>69-09-12-05</u>	<u>Cybersecurity</u>

69-09-12-01. Definitions.

1. "Resource plan" means a set of resource options an electric public utility plans to use to meet the electric capacity and energy requirements of the utility's customers over a planning horizon, including an explanation of the electric supply and demand circumstances when each resource option would be used to meet the capacity and energy needs in an adequate and reliable manner.
2. "Externality" means numerical costs or quantified values assigned to represent environmental costs that are not internalized in the cost of production, or the market price of electricity from a

particular electric resource or the alleged costs of complying with future environmental laws or regulations that have not yet been enacted.

3. "Renewable integration cost" means the cost of measures to help meet the incremental needs of the system as more renewable energy is added to the resource mix.

4. "Unserviced energy" means the amount of end-customer demand measured in megawatt-hours that cannot be supplied due to a deficiency of generation either generated or imported by the electric public utility or transmission capacity.

History: Effective January 1, 2023.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

69-09-12-02. Resource plan procedure.

1. An electric public utility shall file a resource plan on a three-year cycle. The electric public utility may file a supplement to the plan with necessary updates and shall file a supplement upon commission request.

2. The commission may investigate a resource plan. Foregoing an investigation or inaction upon completion of an investigation does not bind the commission in the commission's review of a resource plan in conjunction with a rate case or bind the commission for the purpose of setting rates.

3. The commission shall issue a notice of opportunity to comment on the resource plan when opening an investigation under subsection 2. The comment period must remain open for a period of sixty days, unless ordered otherwise by the commission.

4. During an investigation, an electric public utility may request a commission determination on any issue related to the resource plan. Approval, rejection, or modification of a resource plan, or a commission determination may be presented as prima facie evidence in other proceedings.

5. The commission shall designate by order the commencement of the cycle wherein a resource plan must be filed. The commission may allow for a variance from a filing requirement or procedure upon request.

History: Effective January 1, 2023.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

69-09-12-03. Resource plan attributes.

1. A resource plan must identify the resources needed to meet forecasted capacity and energy needs, including a reserve requirement, subject to various objectives, including reliability, planning, operational, and regulatory requirements. The resource plan must provide a North Dakota preferred plan.

2. If an electric public utility's existing resources are inadequate to meet forecasted capacity and energy requirements, the utility shall identify in the resource plan the proposed actions to meet current and future electric capacity and energy needs, including generating facility additions of various types, sizes, fuel types, any known new transmission facilities, life extensions of existing generation facilities, load-modifying equipment, sponsored conservation programs, market purchases, power purchases from other utilities, and contracted capacity.

3. All resources must be evaluated on a consistent and comparable basis, and the resource plan must describe, and select resources representing the least-cost plan for providing adequate, safe, and reliable service to ratepayers consistent with the public interest and North Dakota energy policy.
4. The resource plan must have a planning horizon of at least fifteen years detailing both supply-side and demand-side resources.
5. The resource plan must describe how the electric public utility intends to meet the forecasted capacity and energy needs within the next five years, along with construction and in-service timelines for generation and associated interconnection and network upgrade and new transmission facilities. The resource plan also must describe how the electric public utility intends to meet the forecasted energy and capacity needs for at least a fifteen-year planning horizon.
6. Except as otherwise required by law or by order of the commission, the North Dakota preferred plan may not select resources based on a carbon cost, greenhouse gas reduction goals, renewable energy standards, emissions goal, or other externalities.
7. The electric public utility may provide alternative scenarios with sensitivities based on proposed and current federal, state, and utility goals and mandates relating to carbon cost, emissions goal, or other externalities.
8. The electric public utility shall describe how scenarios and sensitivities influenced the selection of the North Dakota preferred plan. The scenarios and sensitivities must be evaluated on a consistent and comparable basis, and the utility shall identify and assess the risks of each scenario and sensitivity.

History: Effective January 1, 2023.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

69-09-12-04. Filing requirements.

1. The resource plan must describe the:
 - a. Key data, assumptions, model inputs, information used in producing forecasts and models, and how uncertainties in assumptions were incorporated into the analysis;
 - b. Type, cost, and relevant operating characteristics of demand-side and supply-side resources considered and a description of the type and cost of additional transmission facilities necessitated by the resources;
 - c. Modeling and methodological approach to load forecasting, an assessment of load forecast uncertainty, and the cost and effectiveness of existing and future utility and state-sponsored conservation and load management efforts;
 - d. Projected load for the electric public utility over the planning horizon and the underlying assumptions for the projection. The information must be as geographically specific as possible and describe how the electric public utility will meet the projected load; and
 - e. Criteria used in determining the appropriate level of reliability, including any required reserve or capacity margin seasonal accreditation levels and how the determinations influenced the resource plan.
2. The resource plan must include:

- a. A robust set of scenarios and sensitivities, including changes to the resource mix, fuel prices, load, resource costs, inflation, operating and maintenance costs, capital costs, transmission interconnection and network upgrade costs, congestion costs, renewable integration costs, and resource accreditation.
- b. Reliability and resource adequacy assessments using quantitative metrics capturing the size, frequency, duration, and timing during extreme weather events and normal weather conditions for the fifth, tenth, and final year of the planning horizon. The assessment should include the annual expected unserved energy, the annual expected cost of unserved energy, peak seasonal capacity shortfall in megawatts, number of negative capacity shortfalls, average capacity shortfall in megawatts, longest hourly capacity shortfall, and number of hours requiring the utility to use the maximum available energy imports during a capacity shortfall.
- c. Reliability and resource adequacy assessments using quantitative metrics, including expected unserved energy during correlated natural gas-fired generation fuel delivery outages for the fifth, tenth, and final year of the planning horizon.
- d. A description of energy conversion facilities and associated interconnection and network upgrade and new transmission facilities the electric public utility intends to own and operate, or from which the utility intends to purchase energy output during the ensuing planning horizon, and the energy conversion facilities to be removed from service over the planning horizon.
- e. Plans for energy conversion facility retirements, asset extensions, derates, market purchases and sales, and how scenarios affect cost, affordability, reliability, and resiliency.
- f. To the extent possible, qualitative benefits and quantitative value of baseload and load-following generation resources and the value of proximity of such resources to load.
- g. The estimated annual and total revenue requirement broken out by new and existing resources by cost category, such as generation, transmission, fuel, and energy efficiency.
- h. Any other information as may be requested by the commission.

3. The resource plan must include information on:

- a. Expansion of, improvements to, and more efficient use of existing electric public utility generation, distribution, and transmission facilities;
- b. Opportunities for energy conversion facilities, including economic opportunities to partner with other utilities in constructing and operating new facilities and extending the useful lives of existing facilities;
- c. Opportunities to pursue power purchase agreements with or develop baseload and load-following generation within the state;
- d. Opportunities to pursue power purchase agreements, demand- or supply-side resources, or develop generation;
- e. Distributed generation, including generating capacity provided by cogeneration technologies relying on renewable resources, nonutility generation, and other sources;
- f. Recent or expected changes to generation dispatch across all generation technologies;

- g. Opportunities for existing and planned transmission facilities to reduce congestion, transmission line losses, energy costs, and to increase export or import capability;
- h. The accuracy of the peak demand and energy forecasts compared to the previous integrated resource plan forecasts and an explanation for the causes of any deviation from the previous integrated resource plan forecasts;
- i. The risk of fuel supply disruption due to extreme weather or market events; and
- j. How the electric public utility intends to reconcile potential jurisdictional differences in resource selection.

History: Effective January 1, 2023.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-04.4, 49-05-17

69-09-12-05. Cybersecurity.

1. An electric public utility shall meet with the commission annually to report on cybersecurity preparedness.
2. The report must provide:
 - a. Information on the policies, procedure, and process used to inform the management of cybersecurity risk;
 - b. Information on any critical technology, constraints related to procurement, supply chain risk, impact of compromise to the supply chain, and controls to manage risk associated with dependency on external entities;
 - c. An assessment of emerging threats and efforts taken by the electric public utility to implement cybersecurity measures;
 - d. A description of the process used to support compliance with applicable standards, laws, regulations, and best practices;
 - e. A description of the policies and protections used to ensure the security of information and operational systems and safeguard against loss of confidential information;
 - f. Information on activities to monitor, detect, and analyze information related to cybersecurity threats;
 - g. Information on the systems used for collaboration and communication of information and intelligence sharing;
 - h. Information on activities used to address a detected cybersecurity incident, contain impacts, limit potential damage, and manage consequences of a cyber incident; and
 - i. Information on any plans to maintain resilience and business continuity, timely recovery to normal operations, and corrective actions after occurrence of an incident.
3. The commission may close the meeting to discuss the cybersecurity report, unless the commission orders otherwise.

History: Effective January 1, 2023.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-05-17

TITLE 75
DEPARTMENT OF HUMAN SERVICES

JANUARY 2023

CHAPTER 75-02-02.1

75-02-02.1-05. Coverage groups.

Within the limits of legislative appropriation, the department may provide benefits to coverage groups described in the approved Medicaid state plan in effect at the time those benefits are sought. These coverage groups do not define eligibility for benefits. Any individual who is within a coverage group must also demonstrate that all other eligibility criteria are met.

1. The categorically needy coverage group includes:
 - a. Children for whom adoption assistance maintenance payments are made under title IV-E;
 - b. Children for whom foster care maintenance payments are made under title IV-E;
 - c. Children who are living in North Dakota and are receiving title IV-E adoption assistance payments from another state;
 - d. Children in a foster care placement in North Dakota and receiving a title IV-E foster care payment from another state;
 - e. Caretakers of deprived children who meet the parent and caretaker relative eligibility criteria;
 - f. Families who were eligible under the family coverage group in at least three of the six months immediately preceding the month in which the family became ineligible because of the caretaker relative's earned income or because a member of the unit has a reduction in the time-limited earned income disregard;
 - g. Families who were eligible under the family coverage group in at least three of the six months immediately preceding the month in which they became ineligible as a result, wholly or partly, of the collection or increased collection of child or spousal support continue eligible for Medicaid for four calendar months;
 - h. Pregnant women who meet the nonfinancial requirements with modified adjusted gross income at or below the modified adjusted gross income level for pregnant women;
 - i. Eligible pregnant women who applied for and were eligible for Medicaid as categorically needy during pregnancy continue to be eligible for ~~sixty days~~ twelve months beginning on the last day of the pregnancy, and ~~for the remaining days~~ through the end of the month in which the ~~sixtieth day falls~~ twelve-month period ends;

- j. Children born to the categorically needy eligible pregnant women who applied for and were found eligible for Medicaid on or before the day of the child's birth, for ~~sixty days~~ twelve months beginning on the day of the child's birth and ~~for the remaining days~~ through the end of the month in which the ~~sixtieth day falls~~ twelve-month period ends;
 - k. Children up to age nineteen who meet the nonfinancial Medicaid requirements with modified adjusted gross income at or below the modified adjusted gross income level for that child's age;
 - l. Adults between the ages of nineteen and sixty-four, inclusive, who meet the nonfinancial Medicaid requirements:
 - (1) Who are not eligible under subdivisions e through k above; or
 - (2) Who are not eligible for supplemental security income, unless they fail the medically needy asset test; or
 - (3) Whose modified adjusted gross income is at or below the established modified adjusted gross income level for this group;
 - m. Former foster care children through the month they turn twenty-six years of age, who were enrolled in Medicaid and were in foster care ~~in this state~~ when they turned eighteen years old, provided they are not eligible under any of the categorically eligible groups other than the group identified in subdivision l.
 - n. Aged, blind, or disabled individuals who are receiving supplemental security income payments or who appear on the state data exchange as zero payment as a result of supplemental security income's recovery of an overpayment or who are suspended because the individuals do not have a protective payee, provided that the more restrictive Medicaid criteria is met; and
 - o. Individuals who meet the more restrictive requirements of the Medicaid program and qualify for supplemental security income benefits under section 1619(a) or 1619(b) of the Act [42 U.S.C. 1382h(a) or 1382h(b)].
2. The optional categorically needy coverage group includes:
- a. Individuals under age twenty-one who are residing in adoptive homes and who have been determined under the state-subsidized adoption program to be eligible as provided in state law and in accordance with the requirements of the department;
 - b. Uninsured individuals under age sixty-five, who are not otherwise eligible for Medicaid, who have been screened for breast or cervical cancer under the centers for disease control and prevention breast and cervical cancer early detection program, and who need treatment for breast or cervical cancer, including a precancerous condition of the breast or cervix;
 - c. Gainfully employed individuals with disabilities age eighteen to sixty-five who meet medically needy nonfinancial criteria, have countable assets within the medically needy asset levels, have income below two hundred twenty-five percent of the poverty level, and are not eligible for Medicaid under any other provision except as a qualified Medicare beneficiary or a special low-income Medicare beneficiary. Coverage under this group ends on the last day of the month before the month in which the individual attains the age of sixty-five; and

- d. Individuals under age nineteen who are disabled, who meet medically needy nonfinancial criteria, who have income at or below two hundred fifty percent of the poverty level, and who are not eligible for Medicaid under any other provision. Coverage under this group ends on the last day of the month in which the individual reaches age nineteen.
3. The medically needy coverage group includes:
 - a. Individuals under the age of twenty-one who qualify for and require medical services on the basis of insufficient income, but who do not qualify under categorically needy or optional categorically needy groups, including foster care children who do not qualify as categorically needy or optional categorically needy;
 - b. Pregnant women whose pregnancy has been medically verified and who qualify on the basis of financial eligibility;
 - c. Eligible pregnant women who applied for Medicaid during pregnancy, and for whom recipient liability for the month was met no later than on the date each pregnancy ends, continue to be eligible for ~~sixty days~~twelve months beginning on the last day of pregnancy and ~~for the remaining days~~through the end of the month in which the ~~sixtieth day falls~~twelve-month period ends;
 - d. Children born to eligible pregnant women who have applied for and been found eligible for Medicaid on or before the day of the child's birth, for ~~sixty days~~twelve months beginning on the day of the child's birth, and ~~for the remaining days~~through the end of the month in which the ~~sixtieth day falls~~twelve-month period ends;
 - e. Aged, blind, or disabled individuals who are not in receipt of supplemental security income; and
 - f. Individuals under age twenty-one who have been certified as needing the service, or age sixty-five and over in the state hospital who qualify on the basis of financial eligibility.
 4. The poverty level coverage group includes:
 - a. Qualified Medicare beneficiaries who are entitled to Medicare part A benefits, who meet the medically needy nonfinancial criteria, whose assets do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42 U.S.C. 1395w-114(a)(3)], and have income at or below one hundred percent of the poverty level;
 - b. Qualified disabled and working individuals who are individuals entitled to enroll in Medicare part A under section 1818a of the Social Security Act [42 U.S.C. 1395i-2(a)], who have income no greater than two hundred percent of the federal poverty level and assets no greater than twice the supplemental security income resource standard, and who are not eligible for Medicaid under any other provision;
 - c. Special low-income Medicare beneficiaries who are entitled to Medicare part A benefits, who meet the medically needy nonfinancial criteria, whose assets do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42 U.S.C. 1395w-114(a)(3)], and have income above one hundred percent of the poverty level, but not in excess of one hundred twenty percent of the poverty level; and
 - d. Qualifying individuals who are entitled to Medicare part A benefits, who meet the medically needy nonfinancial criteria, whose assets do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1860D-14(a)(3) [42 U.S.C. 1395w-114(a)(3)], have income above one hundred twenty percent of the poverty

level, but not in excess of one hundred thirty-five percent of the poverty level, and are not eligible for Medicaid under any other provision.

5. Children's health insurance program includes individuals under age nineteen, and who have income at or below one hundred seventy percent of the poverty level. Coverage under this group ends on the last day of the month in which the individual reaches age nineteen.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; January 1, 1994; January 1, 1997; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010; April 1, 2012; January 1, 2014; April 1, 2018; January 1, 2020; [January 1, 2023](#).

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-02, 50-24.1-31, 50-24.1-37; 42 USC 1396a(e)

75-02-02.1-09. Assignment of rights to medical payments and benefits.

1. The applicant and each individual for whom assistance is requested must, as a condition of eligibility, assign rights to payment or benefits from any third party or private insurer and cooperate in obtaining medical payments and benefits. This assignment of rights to payment or benefits is automatic under North Dakota Century Code sections 50-24.1-02 and 50-24.1-02.1. As a condition of eligibility, the applicant or recipient may be required to execute a written assignment whenever appropriate to facilitate establishment of liability of a third party or private insurer.
 - a. The department and county agency shall take reasonable measures to obtain, from an applicant or recipient, health coverage information and other necessary information to determine the liability of third parties and private insurers.
 - b. For purposes of this subsection:
 - (1) "Private insurer" includes any commercial insurance company offering health or casualty insurance to individuals or groups, including both experience-related insurance contract and indemnity contracts; any profit or nonprofit prepaid plan offering either medical services or full or partial payment for services covered by the Medicaid program; and any organization administering health or casualty insurance plans for professional associations, employer-employee benefit plans, or any similar organization offering these payments or services, including self-insured and self-funded plans.
 - (2) "Third party" means any individual, entity, or program that is or may be liable to pay all or a part of the expenditures for services furnished under Medicaid, including a parent or other person who owes a duty to provide medical support to or on behalf of a child for whom Medicaid benefits are sought.
2. Except as provided in this subsection, each applicant and each individual for whom assistance is requested must, as a condition of eligibility, assign rights to medical support from any absent parent of a deprived child, and cooperate with the department and county agency in obtaining medical support and establishing paternity of a child in the Medicaid unit with respect to whom paternity has not been legally established. This assignment of rights is automatic under North Dakota Century Code sections 50-09-0-6.1 and 50-24.1-02.1. The requirement for the assignment of rights to medical support from absent parents continues through the month in which the child reaches age eighteen.
 - a. A pregnant woman is not required to cooperate in establishing paternity and obtaining medical support and payments from, or derived from, the [father of the noncustodial parent of a child born out of wedlock](#), while pregnant, for [sixty days twelve months](#) beginning on

the date the pregnancy ends, and ~~for the remaining days~~through the end of the month in which the ~~sixtieth day falls~~twelve-month period ends.

- b. Recipients of transitional or extended Medicaid benefits are not required to cooperate in obtaining medical support and establishing paternity.
- c. The county agency may waive the requirement to cooperate in obtaining medical support and establishing paternity for good cause if it determines that cooperation is against the best interests of the child. A county agency may determine that cooperation is against the best interests of the child only if:
 - (1) The applicant's or recipient's cooperation in establishing paternity or securing medical support is reasonably anticipated to result in:
 - (a) Physical harm to the child for whom support is to be sought;
 - (b) Emotional harm to the child for whom support is to be sought;
 - (c) Physical harm to the parent or caretaker relative with whom the child is living which reduces such person's capacity to care for the child adequately; or
 - (d) Emotional harm to the parent or caretaker relative with whom the child is living, of such nature or degree that it reduces such person's capacity to care for the child adequately; or
 - (2) At least one of the following circumstances exists, and the county agency believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure medical support would be detrimental to the child for whom support would be sought.
 - (a) The child for whom support is sought was conceived as a result of incest or forcible rape;
 - (b) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction; or
 - (c) The applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep or relinquish the child for adoption, and the discussions have not gone on for more than three months.
- d. Physical harm and emotional harm must be of a serious nature in order to justify a waiver of the requirement to cooperate under this subsection.
- e. A waiver of the requirement to cooperate under this subsection due to emotional harm may only be based on a demonstration of an emotional impairment that substantially impairs the individual's functioning. In determining a waiver of the requirement to cooperate under this subsection, based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the caretaker relative, the county agency must consider:
 - (1) The present emotional state of the individual subject to emotional harm;
 - (2) The emotional health history of the individual subject to emotional harm;
 - (3) Intensity and probable duration of the emotional impairment;
 - (4) The degree of cooperation to be required; and

- (5) The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.
 - f. A determination to grant a waiver of the requirement to cooperate under this subsection must be reviewed no less frequently than every twelve months to determine if the circumstances which led to the waiver continue to exist.
3. For purposes of this section, "cooperate in obtaining medical support and establishing paternity" and "cooperate in obtaining medical payments and benefits" includes:
- a. Appearing at a state or local office designated by the department or county agency to provide information or evidence relevant to the case;
 - b. Appearing as a witness at a court or other proceeding;
 - c. Providing credible information, or credibly attesting to lack of information;
 - d. Paying to the department any support or medical care funds received that are covered by the assignment of rights; and
 - e. Taking any other reasonable steps to assist in establishing paternity and securing medical support and medical payments and benefits.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; [January 1, 2023](#).

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01

75-02-02.1-21. Continuous eligibility for pregnant women and newborns.

When a pregnant woman, whose pregnancy has been ~~medically~~ confirmed, becomes eligible for Medicaid, she continues eligible, without regard to any increase in income of the Medicaid unit, while pregnant, for ~~sixty days~~ [twelve months](#) beginning on the last day of pregnancy, and ~~for the remaining days through the end~~ of the month in which the ~~sixtieth day falls~~ [twelve-month period ends](#). A child born to a woman who is eligible on the day of the child's birth is eligible and continues to be eligible for Medicaid, without regard to the child's income or assets, for ~~sixty days~~ [twelve months](#) beginning on the day of birth, and ~~for the remaining days through the end~~ of the month in which the ~~sixtieth day falls~~ [twelve-month period ends](#).

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; May 1, 2006; [January 1, 2023](#).

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-01

75-02-02.1-24.4. Hospital presumptive eligibility.

- 1. For purposes of this section, "qualified hospital" means a hospital or hospital-owned physician practice or clinic that:
 - a. Is a Medicaid provider;
 - b. Notifies the department of its election to make presumptive eligibility determinations; and
 - c. Has been approved by the department to make presumptive eligibility determinations under this section.
- 2. The department may provide Medicaid benefits during a period of presumptive eligibility, prior to a determination of Medicaid eligibility, to the following individuals:

- a. Children through the month they turn nineteen years of age;
 - b. Former foster care children through the month they turn twenty-six years of age, who were enrolled in Medicaid and were in foster care ~~in this state~~ when they turned eighteen years old;
 - c. Parents and caretaker relatives of children through the month the children turn nineteen years of age;
 - d. Pregnant women; and
 - e. Medicaid expansion group ages nineteen through sixty-four, from the month following the month they turn nineteen years of age through the month prior to the month they turn sixty-five years of age.
3. An applicant shall apply for presumptive eligibility coverage at a qualified hospital. Applicants do not need to be hospitalized. Presumptive eligibility determinations may be made only by qualified hospital employees who are trained and certified to determine presumptive eligibility.
 4. The application for presumptive eligibility must be signed by the applicant, an authorized representative, or if the applicant is incompetent or incapacitated and has not designated an authorized representative, someone acting responsibly for the applicant.
 5. The presumptive eligibility determination is based on the information reported by the applicant and verification is not required. The applicant shall provide all information the qualified hospital needs to determine presumptive eligibility.
 6. Applicants shall attest to each of the following for each household member requesting presumptive eligibility:
 - a. United States citizen, United States national, or eligible immigrant status;
 - b. North Dakota residency;
 - c. Gross income amount;
 - d. Whether or not the applicant is currently enrolled in Medicaid; and
 - e. That the applicant does not have any other health insurance coverage that meets minimum essential coverage, as defined in section 5000A(f) of subtitle D of the Internal Revenue Code, as added by section 1401 of the Affordable Care Act, and implementing regulations.
 7. MAGI-based methodology must be used to determine presumptive eligibility.
 8. The presumptive eligibility period begins on the day the presumptive eligibility determination is made and ends the earlier of:
 - a. If a Medicaid application has been submitted, the day on which a decision is made on that application; or
 - b. If a Medicaid application has not been submitted, the last day of the month following the month the presumptive eligibility determination was made.
 9. Individuals, excluding pregnant women, are eligible for one period of presumptive eligibility per calendar year. Pregnant women are eligible for presumptive eligibility coverage once per pregnancy.

10. Presumptive eligibility coverage does not include the three-month prior period.
11. An individual may not appeal presumptive eligibility determinations.
12. Qualified hospitals shall:
 - a. Make presumptive eligibility determinations for applicants without Medicaid or other health care coverage;
 - b. Assure timely access to care while the presumptive eligibility determination is being made;
 - c. Ensure all employees assisting in and completing presumptive eligibility determinations follow department regulations and policies for presumptive eligibility determinations;
 - d. Provide the applicant with notice of the presumptive eligibility determination;
 - e. Inform applicants at the time of the presumptive eligibility determination that applicants must submit an application for Medicaid to obtain Medicaid coverage beyond the presumptive eligibility period;
 - f. Assist applicants in completing and submitting an application for Medicaid and children's health insurance program or subsidized insurance through the federally facilitated marketplace;
 - g. Meet the performance standards as set forth in subsection 13;
 - h. Ensure all employees assisting in and completing presumptive eligibility applications and determinations attend all presumptive eligibility policy training provided by the department and stay current with changes, including the following:
 - (1) Participate in all inperson, telephone conference, webinar, and computer-based presumptive eligibility training sessions; and
 - (2) Read all information provided regarding updates and changes to presumptive eligibility policies and regulations; and
 - i. Provide verification to the department upon request that all employees assisting in and completing presumptive eligibility applications and determinations have completed the training set forth in subdivision h.
13. Qualified hospitals shall meet the following performance standards:
 - a. Ninety-five percent of applicants are not enrolled in Medicaid at the time the presumptive eligibility determination is made;
 - b. Ninety percent of applicants determined presumptively eligible by the qualified hospital submit a Medicaid application during the presumptive eligibility period; and
 - c. Eighty-five percent of applicants that are determined presumptively eligible and submit a Medicaid application during the presumptive eligibility period are determined eligible for Medicaid.
14. Qualified hospitals that do not meet the performance standards set forth in subsection 13 for three consecutive months are required to participate in additional training or other reasonable corrective action measures, or both, provided by the department. If the qualified hospital continues to fail to meet the performance standards for an additional two consecutive months

after the training or other corrective action measures, the department will disqualify the qualified hospital.

History: Effective July 1, 2016; [amended effective January 1, 2023](#).

General Authority: NDCC 50-06-16, 50-24.1-04

Law Implemented: NDCC 50-24.1-37; 42 U.S.C. 1396a(e)

CHAPTER 75-03-07.1

75-03-07.1-00.1. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter:

1. "Annual" is defined as the provider's approved self-declaration year.
2. "Application" means all forms the department requires when applying or reapplying for a self-declaration.
- ~~2.3.~~ "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~3.4.~~ "Attendance" means the total number of children present at any one time.
- ~~4.5.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
- ~~5.6.~~ "Emergency designee" means an individual designated by a provider to be a backup staff member for emergency assistance or to provide substitute care.
- ~~6.7.~~ "Infant" means a child who is less than twelve months of age.
- ~~7.8.~~ "Provider" means the holder of a self-declaration document.
- ~~8.9.~~ "Supervision" means a provider or emergency designee responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the provider or emergency designee is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider or emergency designee responsible for caring for or teaching children being available for assistance and care so that the child's health and safety is protected.

History: Effective January 1, 2011; amended effective April 1, 2016; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02, 50-11.1-08, 50-11.1-17

75-03-07.1-02. Self-declaration standards - Application.

1. An applicant for a self-declaration document shall submit the application to the department or its authorized agent in which the applicant proposes to provide early childhood services. An application, including a department-approved authorization for background check for household members age twelve and older, an emergency designee, and an applicant, and an application for a fingerprint-based criminal history record check for the applicant and emergency designee, must be made in the form and manner prescribed by the department.
2. The current self-declaration document must be displayed prominently in the premises to which it applies.
3. A provisional self-declaration document may be issued:
 - a. The department may issue a provisional self-declaration document although the applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
 - b. A provisional self-declaration document must:

- (1) State that the provider has failed to comply with all applicable standards and rules of the department;
 - (2) State the items of noncompliance;
 - (3) Expire at a set date, not to exceed six months from the date of issuance; and
 - (4) Be exchanged for an unrestricted self-declaration document, which bears an expiration date of one year from the date of issuance of the provisional self-declaration document, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
- c. The department may issue a provisional self-declaration document only to an applicant or provider who has waived, in writing:
- (1) The right to a written statement of charges as to the reasons for the denial of an unrestricted self-declaration document; and
 - (2) The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted self-declaration document, either at the time of application or during the period of operation under a provisional self-declaration document.
- d. Any provisional self-declaration document issued must be accompanied by a written statement of violations signed by the department and must be acknowledged in writing by the provider.
- e. Subject to the exceptions contained in this section, a provisional self-declaration document entitles the provider to all rights and privileges afforded the provider of an unrestricted self-declaration document.
- f. The provider shall display prominently the provisional self-declaration document and agreement.
- g. The provider shall provide parents written notice that the provider is operating on a provisional self-declaration document and the basis for the provisional self-declaration document.
4. The provider shall be directly responsible for the care, supervision, and guidance of the children.
- a. The provider:
- (1) Must be at least eighteen years of age;
 - (2) Shall provide an environment that is physically and socially adequate for the children; and that the provider is of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
 - (3) Shall devote adequate time and attention to the children in the provider's care;
 - (4) Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the provider's care;
 - (5) Shall provide proper care and protection for children in the provider's care;

- (6) May not use or be under the influence of, and will not allow any household member or emergency designee to use or be under the influence of any illegal drugs or alcoholic beverages while caring for children;
- (7) May not leave children without supervision;
- (8) Shall verify that the child has received all immunizations appropriate for the child's age, as prescribed by the ~~state department of~~ public health division of the department of health and human services, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, ~~unless the child is a drop-in or school-age child~~;
- (9) Shall report immediately, as a mandated reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
- (10) Shall provide a variety of games, toys, books, crafts, and other activities and materials to enhance the child's intellectual and social development and to broaden the child's life experience. Each provider shall have enough play materials and equipment so that at any one time each child in attendance may be involved individually or as a group;
- (11) Shall ensure a current health assessment or a health assessment statement completed by the parent is obtained at the time of initial enrollment of the child, which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually;
- (12) Shall ensure a child information form completed by the parent is obtained at the time of initial enrollment of the child and annually thereafter;
- (13) Shall certify completion of a department-approved basic child care course within ninety days of being approved as a provider;
- (14) Shall be currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;
- (15) Shall be currently certified in pediatric first aid by a program approved by the department;
- (16) Shall complete a minimum of three hours of department-approved training annually, including one hour on sudden infant death prevention prior to provider ~~having unsupervised access~~ providing care to infants. The same training courses may be counted toward self-declaration annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training;
- (17) Shall ensure the emergency designee is currently certified in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;
- (18) Shall ensure the emergency designee is currently certified in pediatric first aid by a program approved by the department;

- (19) Shall ensure the emergency designee certifies completion of a department-approved basic child care course within ninety days;
- (20) Shall ensure that the emergency designee completes one hour of department-approved training on sudden infant death prevention prior to emergency designee ~~having unsupervised access~~ providing care to infants and annually thereafter; and
- (21) Shall release a child only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian;

(22) Shall report to the department or its authorized agent within twenty-four hours:

- (a) A death or serious accident or illness requiring hospitalization of a child while in the care of the self-declaration provider or attributable to care received by the self-declaration provider;
- (b) An injury to any child which occurs while the child is in the care of the self-declaration provider and which requires medical treatment;
- (c) Poisonings or errors in the administration of medication;
- (d) Closures or relocation of self-declaration program due to emergencies; and
- (e) Fire that occurs or explosions that occur in or on the premises of the self-declaration provider;

(23) Shall secure written permission and follow proper instructions as to the administration of medication.

- (a) Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage and labeled with the child's name and date.
- (b) The provider shall store medications in an area inaccessible to children.
- (c) Medications stored in a refrigerator must be stored collectively in a spillproof container.
- (d) The provider shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record; and

(24) Shall notify parents, legal custodians, or guardians of child's exposure to a presumed or confirmed reportable infectious disease.

b. The provider shall ensure that discipline will be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint such as holding. A child may not be subjected to physical harm or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or neglect or abuse to any child is grounds for denial or revocation of a self-declaration document.

- (1) A child may not be kicked, punched, spanked, shaken, pinched, bitten, roughly handled, struck, mechanically restrained, or physically maltreated by the provider, emergency designee, household member, or any other adult in the residence.
 - (2) Authority to discipline may not be delegated to or be administered by children.
 - (3) Separation, when used as discipline, must be appropriate to the child's development and circumstances, and the child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult. A child may not be isolated in a locked room or closet.
 - (4) A child may not be punished for lapses in toilet training.
 - (5) A provider may not use verbal abuse or make derogatory remarks about the child, or the child's family, race, or religion when addressing a child or in the presence of a child.
 - (6) A provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
 - (7) A provider may not force-feed a child or coerce a child to eat unless medically prescribed and administered under a medical provider's care.
 - (8) A provider may not use deprivation of snacks or meals as a form of discipline or punishment.
 - (9) A provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
 - (10) A provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.
- c. The provider shall ensure that a working smoke detector is properly installed and in good working order on each floor used by children.
- d. The provider shall ensure that a fire extinguisher that is inspected annually is properly installed, is in good working order, and is located in the area used for child care.
- e. The provider shall ensure that a working telephone is located in the location used for child care. Current emergency numbers for parents and first responders must be posted.
- f. When transportation is provided by a provider, children must be protected by adequate supervision, safety precautions, and liability insurance.
- (1) Drivers must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint laws.
 - (2) A child must not be left unattended in a vehicle.
- g. Aquatic activities:
- (1) The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of the children participating in aquatic activities, and additional safety precautions to be taken.

- (2) The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
5. Potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, poisonous plants, and open stairways must not be accessible to children. Guns and ammunition must be kept in separate locked storage, or trigger locks must be used. Other weapons and dangerous sporting equipment, such as bows and arrows, must not be accessible to children.
6. If the physical, cognitive, social, or emotional health capabilities of an applicant or provider appear to be questionable, the department may require that the individual present evidence of capability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
7. A self-declaration document is only effective for one year.

History: Effective June 1, 1995; amended effective January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2022; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-07, 50-11.1-08, 50-11.1-16, 50-11.1-17

75-03-07.1-06. Denial or revocation of self-declaration document.

1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the application as listed in section 75-03-07.1-02.
2. A fraudulent or untrue representation is grounds for revocation or denial.
3. a. The applicant, self-declaration provider, emergency designee, and household members may not have been found guilty of, pled guilty to, or pled no contest to:
 - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - (2) An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in paragraph 1; or
 - (3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

- b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's, provider's, or emergency designee's ability to serve the public in a capacity as a provider or emergency designee.
 - c. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described North Dakota Century Code section 12.1-17-01.2, domestic violence; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The provider shall ensure that each emergency designee submits an application for a fingerprint-based criminal history record check upon hire and within five years from the date of initial approval and at least once every five years thereafter. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.
5. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.
6. A provider shall ensure safe care for the children receiving services in the provider's residence. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that a child has been abused or neglected by an applicant, provider, emergency designee, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or self-declaration document may be denied or revoked.
 - a. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, provider, emergency designee, or household member, the applicant or provider shall furnish information to the department, from which the department can determine the applicant's, provider's, or emergency designee's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of ability to the applicant or provider.

- b. Each applicant, provider, and emergency designee shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.
- c. Household members ~~over the age of twelve~~ and older shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form at the time of application or upon obtaining residence at the location of the child care.

History: Effective June 1, 1995; amended effective January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; April 1, 2018; July 1, 2020; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-08, 50-11.1-09

Law Implemented: NDCC 50-11.1-06.2, 50-11.1-08, 50-11.1-09, 50-11.1-16, 50-11.1-17

CHAPTER 75-03-08

75-03-08-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Annual" is defined as the provider's licensing year.
2. "Application" means all forms the department requires when applying or reapplying for a license.
- ~~2.3.~~ "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~3.4.~~ "Attendance" means the total number of children present at any one time at the family child care.
- ~~4.5.~~ "Child with special needs" means a child determined by a medical provider to have or to be at risk for chronic physical, developmental, behavioral, or emotional conditions.
- ~~5.6.~~ "Emergency designee" means an individual designated by the provider to be a backup staff member for emergency assistance or to provide substitute care.
- ~~6.7.~~ "Infant" means a child who is younger than twelve months of age.
- ~~7.8.~~ "Medication" is defined as any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~8.9.~~ "Provider" means owner or operator of a family child care.
- ~~9.10.~~ "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~10.11.~~ "Volunteer" means an individual who visits or provides an unpaid service, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-08-08.1. Duties of the provider.

1. A provider shall be currently certified:
 - a. In infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department; and
 - b. In pediatric first aid by a program approved by the department.
2. The provider shall have an adult staff member responsible for caring for or teaching children present in the family child care at all times to supervise staff members under the age of eighteen and children in care.

3. A staff member may not at any time place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.
4. The provider shall report to the department or its authorized agent within twenty-four hours:
 - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the family child care or attributable to care received in the family child care;
 - b. An injury to any child which occurs while the child is in the care of the family child care and which requires medical treatment;
 - c. Poisonings or errors in the administration of medication;
 - d. Closures or relocations of child care programs due to emergencies; and
 - e. Fire that occurs or explosions that occur in or on the premises of the family child care.
5. The provider shall be present in the family child care no less than sixty percent of the time when children are in care.
6. The provider, as a mandatory reporter, shall report any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03.
7. The provider may select an emergency designee.
8. The provider shall maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the family child care.
9. The provider must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.
10. The provider shall ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so the child's health and safety is protected.
11. The provider shall ensure that each child is released only to the child's parent, legal custodian, guardian, or an individual who has been authorized by the child's parent, legal custodian, or guardian.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; [January 1, 2023](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-10. Minimum qualifications of providers.

A provider shall:

1. Be at least eighteen years of age;
2. Certify completion of a department-approved basic child care course within ninety days of licensure;
3. Certify completion of a minimum of nine hours of department-approved training related to child care every licensing year. The same training courses may be counted toward licensing annual

requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training; and

4. Certify ~~annual~~-completion of one hour of department-approved sudden infant death prevention training prior to provider ~~having unsupervised access~~providing care to infants and annually thereafter.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-12. Minimum qualifications for all staff members responsible for caring for or teaching children.

Each staff member who provides care shall:

1. Be at least fourteen years of age, provided that each staff member under age sixteen provides written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the provider may provide care if the family member is at least twelve years of age;
2. Be an individual of good physical, cognitive, social, and emotional health and use mature judgment when making decisions impacting the quality of child care;
3. Certify completion of a department-approved basic child care course within ninety days of employment;
4. Be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;
5. Be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in pediatric first aid by a program approved by the department;
6. Certify ~~annual~~-completion of one hour of department-approved sudden infant death prevention training prior to staff member ~~having unsupervised access~~providing care to infants and annually thereafter; and
7. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and child care activities during the first week of employment.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-14. Minimum requirements of the facility.

1. The family child care must contain adequate space, indoors and out, for the daily activities of the children. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms,

pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. Operators who provide seventy-five square feet [6.97 square meters] of separate indoor recreation space per child are exempt from the outdoor space requirement.

2. The family child care must be clean and maintained to protect the health and safety of children. The family child care and outdoor play area must be free of clutter, accumulation of refuse, standing water, unprotected wells, debris, and other health and safety hazards. Garbage must be regularly removed.
3. The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children.
4. The provider shall ensure that the family child care is equipped with one properly installed smoke detector located in each sleeping area used by the children, and one properly installed smoke detector and one fire extinguisher per level. Properly installed means installed according to manufacturer's or fire inspector's directions.
5. The provider shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
6. The provider shall ensure that the family child care has a drinking water supply from an approved community water system or from a source tested and approved by the ~~state department of~~public health division of the department of health and human services.
7. The provider shall ensure that each child has a comfortable and clean place to sleep or rest and an individual blanket. The provider may allow a child to sleep or rest on the floor only when the floor is carpeted or padded, warm, and free from drafts.
8. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
9. The provider shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, and poisonous plants are not accessible to children. The provider shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. The provider shall ensure indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The provider shall ensure that all toys and equipment are kept clean and sanitary. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
11. The provider shall ensure that exit doorways and pathways are not blocked.
12. The provider shall ensure that the family child care has a working telephone in the location used for child care. The provider shall post emergency numbers of parents and first responders.
13. The family child care must have an indoor bathroom with a minimum of one sink and one flush toilet.
14. The family child care must have hot and cold running water. The water in the faucets used by children must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

15. The family child care must meet the local minimum fire and safety standards. The provider shall obtain a fire inspection prior to licensure and annually thereafter. Any inspection fees are the provider's responsibility. The provider shall have any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the department or its authorized agent. If the fire, safety, health, or sanitation environment appears questionable, the department or its authorized agent may require the provider to obtain additional inspections at the cost of the provider. The provider shall provide:
 - a. The fire inspector's written statement of compliance with the local fire code, if there is one; or
 - b. The fire inspector's written statement that the family child care has been inspected and that the inspector is satisfied that the family child care meets minimum fire and safety standards.
16. The provider shall ensure that accumulations of water, ice, snow, or debris are removed from steps and walkways as quickly as possible.
17. The provider shall ensure that combustible materials are kept away from light bulbs and other heat sources.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2014; April 1, 2016; July 1, 2020; [January 1, 2023](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-21.1. Minimum sanitation and safety requirements.

1. Children shall have received all immunizations appropriate for the child's age, as prescribed by the ~~state department of~~ [public health division of the department of health and human services](#), unless the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs.
2. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, single-use or individually designated cloth towels, or paper towels must be available at each sink.
3. The provider shall have a statement on file, signed by the child's parents, authorizing emergency medical care for each child.
4. The provider shall ensure at least one department-approved first-aid kit is maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times.
5. The provider shall have plans to respond to illness and emergencies, including evacuation in case of fire, serious injury, and ingestion of poison.
6. If children in care require medication, the provider shall secure written permission and follow proper instructions as to the administration of medication.
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage and labeled with the child's name and date.
 - b. The provider shall store medications in an area inaccessible to children.

- c. Medications stored in a refrigerator must be stored collectively in a ~~spill-proof~~spillproof container.
 - d. The provider shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record.
7. The provider shall establish practices in accordance with guidance obtained through consultation with local health unit authorities or state authorities from the public health division of the department authorities of health and human services regarding the exclusion and return of children with infectious or communicable conditions. The provider may obtain this guidance directly or through current published materials regarding exclusion and return to the family child care. The provider shall notify the parents, legal custodians, or guardians of a child's exposure to a presumed or confirmed reportable infectious disease.
 8. The provider may release a child only to the child's parent or individual who has been authorized by the child's parent.
 9. The provider shall ensure that children playing outdoors are clothed appropriately for weather conditions.
 10. The provider shall ensure that a staff member responsible for caring for or teaching children is supervising directly any child who is bathing or using a pool.
 11. The provider shall ensure that children receive proper supervision when playing outdoors.
 12. Children's personal items, including combs, brushes, pacifiers, and toothbrushes, must be individually identified and stored in a sanitary manner.
 13. Pets and animals.
 - a. The provider shall ensure that only small pets that are contained in an aquarium or other approved container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The provider shall ensure parents are aware of the presence of pets and animals in the family child care.
 - d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall

- ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
 - h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
14. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the family child care and shall empty, clean, and sanitize wading pools daily.
 15. All swimming pools used by the children must be approved annually by the local health unit.
 16. Aquatic activities:
 - a. The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
 - b. The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
 17. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in covered containers. Open burning is not permitted. The provider shall keep indoor garbage in containers with lids. The provider may allow paper waste to be kept in open waste containers.
 18. The provider shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the provider shall ensure:
 - a. Pillows and mattresses have clean coverings.
 - b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
 - c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
 - d. Cots, mats, and cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children.
 - e. That cots, mats, and cribs are single occupancy.
 - f. Each bed, cot, or mat has sufficient blankets available.
 - g. That aisles between beds, cots, mats, or cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, or cribs are occupied.
 - h. Provide separate storage for personal blankets or coverings.
 - i. That mattresses and sheets are properly fitted.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016; April 1, 2018; July 1, 2020; [January 1, 2023](#).

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-22. Records.

1. A copy of this chapter must be kept on the premises and available to staff members at all times.
2. The provider shall maintain the following records:
 - a. The child's full name, birth date, current home address, legal names of the child's parents, and current business and personal telephone numbers where they can be reached;
 - b. A written statement from the parents or legal guardian authorizing emergency medical care;
 - c. Names and telephone numbers of individuals authorized to take the child from the family child care;
 - d. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the ~~state department of~~public health ~~division of the department of health and human services~~, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, ~~unless the child is a drop-in or school-age child~~; and
 - e. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity. This assessment shall be completed annually.
3. The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:
 - a. Authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent. The family child care shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2022; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-28. Child abuse and neglect decisions.

1. A provider shall ensure safe care for the children receiving services in the provider's family child care. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision

of child care, and the application or license may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, provider's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or provider.

2. Each applicant, provider, emergency designee, and staff member in the family child care shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.
3. Household members ~~over the age of twelve~~ and older shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the family child care.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

CHAPTER 75-03-09

75-03-09-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Annual" is defined as the provider's licensing year.
2. "Application" means all forms the department requires when applying or reapplying for a license.
- ~~2.3.~~ "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~3.4.~~ "Attendance" means the total number of children present at any one time at the group child care.
- ~~4.5.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
- ~~5.6.~~ "Emergency designee" means an individual designated by the operator to be a backup caregiver for emergency assistance or to provide substitute care.
- ~~6.7.~~ "Group child care supervisor" means an individual responsible for overseeing the day-to-day operation of a group child care.
- ~~7.8.~~ "Infant" means a child who is less than twelve months of age.
- ~~8.9.~~ "Medications" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~9.10.~~ "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a group child care.
- ~~10.11.~~ "Provider" means the group child care owner or operator.
- ~~11.12.~~ "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~12.13.~~ "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-09-10. Minimum qualifications of group child care supervisor.

1. A group child care supervisor must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.
2. The group child care supervisor shall meet at least one of the following qualifications, in addition to those set out in subsection 1:

- a. A bachelor's degree in the field of early childhood education or child development;
 - b. An associate's degree with at least one of the following:
 - (1) Eight semester hours or twelve quarter hours of department-approved early childhood education or child development;
 - (2) One hundred twenty hours of department-approved early childhood training; or
 - (3) A director's credential approved by the department;
 - c. Current certification as a child development associate or successful completion of a department-approved diploma program with emphasis in early childhood or child care;
 - d. Certification from a Montessori teacher training program;
 - e. At least one year of exclusive experience as a self-declaration holder or licensed child care provider with positive references from at least two parents whose children were in the provider's care;
 - f. A high school degree or equivalency with certification of completion in a secondary occupational child care program and at least one year of exclusive experience working with young children, with references from at least two individuals who either had their children in the group child care supervisor's care or instructed the group child care supervisor in child care programming; or
 - g. A minimum of one year of exclusive experience providing care to three or more children, with positive references from at least two parents whose children were in the group child care supervisor's care or a center director or teacher who observed the group child care supervisor's care of children first hand.
3. The group child care supervisor shall certify completion of a minimum of ten hours of department-approved training related to child care annually, including one hour on sudden infant death prevention prior to ~~provider having unsupervised access~~ providing care to infants. ~~The ten hours of training in the first year following initial licensure must include a~~ department-approved basic child care course must be completed within ninety days of employment. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training.
 4. The group child care supervisor must be present in the group child care no less than sixty percent of the time when children are in care.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-12. Minimum qualifications for all staff members responsible for caring for or teaching children.

Staff members shall:

1. Be at least fourteen years of age, provided that each staff member under age sixteen provides written parental consent for employment as a staff member, and the employment

arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the provider may provide care if the family member is at least twelve years of age;

2. Be individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
3. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and group child care activities during the first week of work;
4. Ensure that at no time a child is placed in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health;
5. Certify completion of a department-approved basic child care course within ninety days of employment;
6. Certify the staff member's own completion of department-approved training related to child care annually as set forth below:
 - a. A staff member working thirty or more hours per week shall certify a minimum of eight hours of department-approved training annually;
 - b. A staff member working fewer than thirty and at least twenty hours per week shall certify a minimum of six hours of department-approved training annually;
 - c. A staff member working fewer than twenty and at least ten hours per week shall certify a minimum of four hours of department-approved training annually;
 - d. A staff member working fewer than ten hours per week shall certify a minimum of two hours of department-approved training annually;
 - e. An emergency designee is exempt from department-approved annual training, with the exception of training required by subsections 5 and 7; and
 - f. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training; and
7. Certify ~~annual~~ completion of one hour of department-approved sudden infant death prevention training prior to staff member ~~having unsupervised access~~ providing care to infants and annually thereafter;
8. Ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected;
9. Be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department; and

10. Be currently certified within ninety days of employment and prior to staff member having unsupervised access to children in care, in pediatric first aid by a program approved by the department.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-18. Minimum sanitation and safety requirements.

1. In facilities other than an occupied private residence and where meals are prepared, the provider shall ensure that the ~~state department of~~public health division of the department of health and human services conducts an annual inspection. If only snacks or occasional cooking projects are prepared, ~~a state department of health~~an inspection by the public health division of the department of health and human services is not required. The provider shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the department or its authorized agent.
2. The provider shall ensure that the group child care bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.
3. The provider shall ensure that the group child care building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and the staff members.
4. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, individually designated cloth towels, or paper towels must be available at each sink.
5. The provider shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The provider shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
6. The provider shall ensure that the group child care ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
7. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The provider shall keep indoor garbage in covered containers. The provider may allow paper waste to be kept in open waste containers.
8. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
9. The provider shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The provider shall keep guns and ammunition in locked storage, each

separate from the other, or shall use trigger locks . The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.

10. The provider shall ensure that indoor floors and steps are not slippery and do not have splinters. The provider shall ensure that accumulations of water, ice, snow, or debris are removed from steps and walkways as quickly as possible.
11. The provider shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
12. The provider shall take steps to keep the group child care free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the group child care. Insect repellent may be applied outdoors on children with parental permission.
13. The provider shall ensure that exit doorways and pathways are not blocked.
14. The provider shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
15. The provider shall ensure that combustible materials are kept away from light bulbs and other heat sources.
16. The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the group child care is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
17. A provider shall ensure that all group child care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.
18. The provider shall ensure that personal items, including combs, pacifiers, and toothbrushes, are individually identified and stored in a sanitary manner.
19. Pets and animals.
 - a. The provider shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The provider shall ensure parents are aware of the presence of pets and animals in the group child care.

- d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
 - h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
20. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the group child care and shall empty, clean, and sanitize wading pools daily.
21. All swimming pools used by children must be approved annually by the local health unit.
22. Aquatic activities:
- a. The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
 - b. The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
23. The provider shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the provider shall ensure:
- a. Pillows and mattresses have clean coverings.
 - b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
 - c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
 - d. Cots, mats, or cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children;
 - e. That cots, mats, and cribs are single occupancy.
 - f. Each bed, cot, or mat has sufficient blankets available.
 - g. That aisles between beds, cots, mats, or cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, or cribs are occupied.
 - h. Provide separate storage for personal blankets or coverings.

- i. That mattresses and sheets are properly fitted.

History: Effective December 1, 1981; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; July 1, 2020; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-22. Records.

1. The provider shall keep a copy of this chapter on the premises of the group child care and shall make it available to staff members at all times.
2. The provider shall maintain the following records:
 - a. The child's full name, birthdate, and current home address;
 - b. Legal names of the child's parents, and current business and personal telephone numbers where they can be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;
 - d. A written statement from the parents authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the group child care;
 - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the ~~state department of~~public health [division of the department of health and human services](#), or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, ~~unless the child is a drop-in or school-age child~~; and
 - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The provider must verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
4. The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:
 - a. The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the children's interests should that be necessary; and
 - c. Individuals who possess a written authorization from the child's parent. The group child care shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-24. Specialized types of care and minimum requirements.

1. Infant care.

a. Environment and interactions.

- (1) A group child care serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
- (2) The provider shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children, or emergency designee, such as being held, rocked, talked with, or sung to.
- (3) The staff members responsible for caring for or teaching children, or emergency designee, shall respond promptly to comfort an infant's or toddler's physical and emotional distress.
 - (a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
 - (b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.
- (4) The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.
- (5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the group child care for a part of each day to provide some change of physical surroundings and to interact with other children.
- (6) The provider shall ensure that infants are not shaken or jostled.
- (7) The provider shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.
- (8) The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

- (1) The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent or medical provider in writing.
- (2) The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider in writing.

- (3) The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
- (4) The provider shall ensure that frozen breast milk is thawed under cool running tap water or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.
- (5) The provider shall ensure that an infant is not fed by propping a bottle.
- (6) The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
- (7) The provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

- (1) The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the group child care if children requiring diapering are in care.
- (2) The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.
- (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- (4) The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the group child care.

d. Sleeping.

- (1) The provider shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- (2) The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- (3) The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.
- (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- (5) The provider shall ensure that all items are removed from and that no toys or objects are hung over or attached to the crib or portable crib when an infant is sleeping or preparing to sleep. With written parental permission, the provider may place one individual infant blanket or sleep sack, a pacifier, and a security item that does not pose a risk of suffocation to the infant in the crib or portable crib while an infant is sleeping or preparing to sleep.

- (6) A staff member shall check on sleeping infants regularly and have a monitor in the room with the sleeping infants, unless a staff member is in the room with the infants while the infants are sleeping.
2. Night care.
 - a. Any group child care offering night care shall provide program modifications for the needs of children and their parents during the night.
 - b. In consultation with parents, special attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care, appropriate to the child's needs.
 - c. The provider shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parents' work schedule.
 - d. The provider shall ensure that children under the age of six are supervised directly when bathing.
 - e. The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available.
 - f. The provider shall require each child in night care to have night clothing and a toothbrush marked for identification.
 - g. For a group child care not operating out of an occupied private residence, staff members responsible for caring for or teaching children must be awake and within hearing range during sleeping hours to provide for the needs of children and to respond to an emergency.
 3. Drop-in group child care.
 - a. If a group child care serves drop-in children, schoolchildren, or before-school and afterschool children, the group child care must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program and to maintain the proper staff member to child ratio.
 - b. The provider shall ensure that the program reflects the individual needs of the children who are provided drop-in care.
 - c. The provider shall ensure that records secured comply with all enrollment requirements contained in section 75-03-09-22, ~~except the immunization verification record requirement.~~
 - d. The provider shall ensure that admittance procedures provide for a period of individual attention for the child to acquaint the child with the group child care, its equipment, and the staff members.
 - e. A group child care may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the group child care to exceed the total number of children for which the group child care is licensed.
 4. A provider shall ensure that a group child care serving only drop-in care children complies with this chapter but is exempt from the following provisions:

- a. Subsections 4 and 5 of section 75-03-09-20, subsections 6 and 7 of section 75-03-09-21, subdivision f of subsections 2 and 3 of section 75-03-09-22, and subsection 1 of section 75-03-09-25.
- b. A group child care serving only drop-in care children is exempt from the outdoor space requirements.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-26. Minimum provisions regarding emergency care for children.

The group child care must have written plans to respond to illness and emergencies, including burns, serious injury, and ingestion of poison. The provider shall ensure that parents of enrollees are advised of these plans. Plans must:

1. Establish emergency response procedures;
2. Provide accessible posting of emergency response procedures and require training for all staff members concerning those emergency procedures;
3. Require the availability of at least one working flashlight;
4. Require at least one department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times;
5. Provide a working telephone line immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;
6. Require a plan for responding to minor illnesses and minor accidents when children are in the care of the group child care;
7. Require written permission to dispense medication and proper instructions for the administration of medication obtained from the parent of a child in the group child care who requires medication.
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage, and labeled with the child's name and date.
 - b. Medication must be stored in an area inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container.
 - c. The provider shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. The provider shall include completed medication records in the child's record;
8. Require a supervised temporary isolation area designated for a child who is too ill to remain in the group child care or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and

- b. First aid is provided and medical care is sought, as necessary;
9. Identify a source of emergency health services available to the group child care, including:
 - a. A prearranged plan for emergency medical care in which the parent of each enrolled child is advised of the arrangement; and
 - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent or emergency contact is notified;
 10. Establish and implement practices in accordance with guidance obtained through consultation with local health unit authorities or state authorities from the public health division of the department of health authorities and human services regarding the exclusion and return of children with infectious or communicable conditions. The operator may obtain this guidance directly or through current published materials regarding exclusion and return to the group child care; ~~and~~
 11. Require that the group child care operator inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, and immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made part of the child's record; and
 12. Notify parents, legal custodians, or guardians of a child's exposure to a presumed or confirmed reportable infectious disease.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-28. Child abuse and neglect decisions.

1. A provider shall ensure safe care for the children receiving services in the provider's group child care. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department can determine the applicant's, provider's, emergency designee's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or provider.
2. Each applicant, provider, emergency designee, and staff member in the group child care shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.

3. Household members ~~over the age of~~ twelve and older shall complete, and the provider shall submit to the department or its authorized agent, a department-approved authorization for background check form at the time of application or relicensure or upon obtaining residence at the location of the group child care.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

CHAPTER 75-03-10

75-03-10-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Annual" is defined as the provider's licensing year.
2. "Application" means all forms the department requires when applying or reapplying for a license.
- ~~2.3.~~ "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~3.4.~~ "Attendance" means the total number of children present at any one time at the facility.
- ~~4.5.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
- ~~5.6.~~ "Director" means the individual responsible for overseeing the general operation and implementing the policies and procedures of the child care center.
- ~~6.7.~~ "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.
- ~~7.8.~~ "Infant" means a child who is less than twelve months of age.
- ~~8.9.~~ "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~9.10.~~ "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a child care center.
- ~~10.11.~~ "Substitute staff" means staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~11.12.~~ "Supervisor" means any individual with the responsibility for organizing and supervising daily child care center activities.
- ~~12.13.~~ "Volunteer" means an individual who visits or provides an unpaid service, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-10-10. Minimum qualifications of child care center director.

A director shall:

1. Be an adult of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care;
2. Possess knowledge or experience in management and interpersonal relationships;
3. Hold at least one of the following qualifications, in addition to those set out in subsection 1:

- a. A bachelor's degree in the field of early childhood education or child development;
 - b. A bachelor's degree with at least six months of experience in a child care center or similar setting and one of the following:
 - (1) Eight semester hours or twelve quarter hours of department-approved early childhood education or child development;
 - (2) One hundred twenty hours of department-approved early childhood training; or
 - (3) A director's credential approved by the department;
 - c. An associate's degree in the field of early childhood education or child development with at least six months of experience in a child care center or similar setting;
 - d. An associate's degree with at least one year of experience in a child care center or similar setting and one of the following:
 - (1) Eight semester hours or twelve quarter hours of department-approved early childhood education or child development;
 - (2) One hundred twenty hours of department-approved early childhood training; or
 - (3) A director's credential approved by the department;
 - e. A teaching certificate in elementary education with at least six months of experience in a child care center or similar setting;
 - f. A current certification as a child development associate or successful completion of a department-approved diploma program with emphasis in early childhood or child care, with at least one year of experience in a child care center or similar setting; or
 - g. Certification from a Montessori teacher training program with at least one year of experience in a Montessori school, child care center, or similar setting and at least one of the following:
 - (1) Eight semester hours or twelve quarter hours of department-approved child development or early childhood education;
 - (2) One hundred twenty hours of department-approved early childhood training; or
 - (3) A director's credential approved by the department; and
4. Certify annual completion of a minimum of thirteen hours of department-approved training related to child care, including one hour on sudden infant death prevention prior to the director ~~having unsupervised access~~ providing care to infants. A department-approved basic child care course must be completed within ninety days of employment. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-11.1. Minimum qualifications of child care center supervisor.

A supervisor shall:

1. Be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
2. Have a demonstrated ability in working with children;
3. Hold at least one of the following qualifications:
 - a. An associate degree in the field of early childhood development;
 - b. Current certification as a child development associate or successful completion of a department-approved diploma program with an emphasis in early childhood or child care;
 - c. Certification from a Montessori teacher training program; or
 - d. A high school diploma or high school equivalency with at least one year of experience in a child care or similar setting;
4. Possess knowledge and experience in building and maintaining interpersonal relationships;
5. Successfully complete a department-approved basic child care course within ~~the first three months~~ninety days of employment; and
6. Successfully complete a minimum of thirteen hours of department-approved training related to child care, ~~including one hour on sudden infant death prevention if the supervisor provides care to infants each year, and annually thereafter. The supervisor shall certify completion of one hour of department-approved sudden infant death prevention training before providing care to infants and annually thereafter.~~ The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training.

History: Effective January 1, 1999; amended effective January 1, 2011; January 1, 2013; April 1, 2016; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-12. Minimum qualifications for all staff members responsible for caring for or teaching children.

1. Staff members:
 - a. Shall be at least fourteen years of age, provided that each staff member under age sixteen has written parental consent for employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07;
 - b. Shall be individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
 - c. Shall certify completion of a department-approved basic child care course within ninety days of employment;
 - d. Shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the

- American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department;
- e. Shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in pediatric first aid by a program approved by the department;
 - f. Shall certify the staff member's own ~~annual~~—successful completion of the department-approved training related to child care each year, and annually thereafter, as set forth below:
 - (1) If working thirty or more hours per week, certify thirteen hours of department-approved training annually;
 - (2) If working fewer than thirty hours and more than twenty hours per week, certify eleven hours of department-approved training annually;
 - (3) If working fewer than twenty hours and at least ten hours per week, certify nine hours of department-approved training annually;
 - (4) If working fewer than ten hours per week, certify seven hours of department-approved training annually;
 - (5) Completion of one hour on sudden infant death prevention prior to the staff member ~~having unsupervised access~~providing care to infants;
 - (6) The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course, with the exception of sudden infant death prevention annual training; and
 - (7) Substitute staff and emergency designees are exempt from the annual training requirement with the exception of subdivision c of paragraph 5; and
 - g. Shall not place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health;
2. Receive a two-day, onsite orientation to the child care program during the first week of employment. The director shall document orientation of each staff member responsible for caring for or teaching children on an orientation certification form. The orientation must address the following:
- a. Emergency health, fire, and safety procedures for the center;
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
 - c. Any special health or nutrition problems of the children assigned to the staff member;
 - d. Any special needs of the children assigned to the staff member;
 - e. The planned program of activities at the child care center;
 - f. Rules and policies of the child care center; and
 - g. Child abuse and neglect reporting laws; and

3. Ensure safe care for children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety is protected.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-18. Minimum sanitation and safety requirements.

1. The operator shall ensure that in child care centers, other than an occupied private residence, where meals are prepared, the ~~state department of~~public health division of the department of health and human services conducts an annual inspection. If only snacks or occasional cooking projects are prepared, ~~a state department of health~~an inspection by the public health division of the department of health and human services is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the department or its authorized agent.
2. The operator shall ensure that the child care center bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.
3. The operator shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the operator shall ensure:
 - a. Pillows and mattresses have clean coverings.
 - b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
 - c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
 - d. Cots, mats, and cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children.
 - e. That cots, mats, and cribs are single occupancy.
 - f. Each bed, cot, or mat has sufficient blankets available.
 - g. That aisles between beds, cots, mats, cribs, and portable cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, cribs, and portable cribs are occupied.
 - h. Provide separate storage for personal blankets or coverings.
 - i. That mattresses and sheets are properly fitted.
4. The operator shall ensure that the child care center's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.

5. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, single-use or individually designated cloth towels, or paper towels must be available at each sink.
6. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
7. The operator shall ensure that the child care center ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
8. The operator shall ensure that the garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
9. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
10. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
11. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
12. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
13. The operator shall take steps to keep the child care center free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the child care center. Insect repellent may be applied outdoors on children with written parental permission.
14. The operator shall ensure that exit doorways and pathways are not blocked.
15. If the center is providing care to children in wheelchairs, the operator shall ensure doors have sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the child care center.
16. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
17. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
18. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local

fire authorities. During the heating season when the child care center is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].

19. The operator shall ensure that all child care center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.
20. The operator shall ensure that personal items including combs, pacifiers, and toothbrushes are individually identified and stored in a sanitary manner.
21. Pets and animals.
 - a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The operator shall ensure parents are aware of the presence of pets and animals in the child care center.
 - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
 - h. The operator shall ensure that the child care center is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
22. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the child care center and shall empty, clean, and sanitize wading pools daily.
23. All swimming pools used by children must be approved annually by the local health unit.

24. Aquatic activities:
 - a. The operator shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
 - b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
25. Water supply:
 - a. The operator shall ensure that the child care center has a drinking supply from an approved community water system or from a source tested and approved annually by the department of environmental quality.
 - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups.
 - c. The child care center must have hot and cold running water. The water in the faucets used by children may not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
26. Toilet and sink facilities:
 - a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members.
 - b. Toilets must be located in rooms separated from those used for cooking, eating, and sleeping. A minimum of one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained.
 - c. The operator shall ensure that separate restrooms are provided for boys and girls six years of age and over, and partitions are installed to separate toilets in these restrooms.
 - d. The operator shall provide child-sized toilet adapters, training chairs, or potty chairs for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
 - e. The operator shall provide at least one handwashing sink per toilet room facility or diapering area.
 - f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.
27. The operator of a child care center not on a municipal or public water supply or wastewater disposal system shall ensure the child care center's sewage and wastewater system has been approved by the department of environmental quality.
28. Laundry:
 - a. If the child care center provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation.
 - b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation.

- c. The operator shall ensure that in all new or extensively remodeled child care centers, the handling, sorting, or washing of soiled linens or blankets takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas.
- d. The operator shall ensure that in an existing child care center where physical separation of laundry and kitchen areas is impractical, procedures are developed that prohibit the washing or transportation of laundry while meals are being prepared or served.
- e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas.
- f. If the child care center provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the operator shall ensure that water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius].
- g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the center shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-22. Records.

- 1. The operator shall keep a copy of this chapter on the premises of the child care center and shall make it available to staff members at all times.
- 2. The operator shall maintain the following records:
 - a. The child's full name, birth date, and current home address;
 - b. Legal names of the child's parents and current business and personal telephone numbers where they can be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;
 - d. A written statement from the parents authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the child care center;
 - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the ~~state department of~~public health [division of the department of health and human services](#), or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, ~~unless the child is a drop-in or school-age child~~; and

- g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
 4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents of each child, and to the following, unless otherwise protected by law:
 - a. The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess a written authorization from the child's parent. The child care center shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-24. Specialized types of care and minimum requirements.

1. Infant care.
 - a. Environment and interactions.
 - (1) A child care center serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
 - (2) The operator shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children or emergency designee such as the staff member or emergency designee holding, rocking, talking with, or singing to the child.
 - (3) A staff member shall respond to comfort an infant's or toddler's physical and emotional distress:
 - (a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
 - (b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.
 - (4) The operator shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, uncluttered area.

- (5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the child care center for a part of each day to provide children with some change of physical surroundings and to allow them to interact with other children.
 - (6) The operator shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.
 - (7) The operator shall ensure that infants are not shaken or jostled.
 - (8) The operator shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.
- b. Feeding.
- (1) The operator shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider in writing.
 - (2) The operator shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider in writing.
 - (3) The operator shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
 - (4) The operator shall ensure that frozen breast milk is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.
 - (5) The operator shall ensure that an infant is not fed by propping the bottle.
 - (6) The operator shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
 - (7) The operator shall ensure that staff members responsible for caring for or teaching children, emergency designee, or substitute staff are within sight and hearing range of an infant during the infant's feeding or eating process.
- c. Diapering.
- (1) The operator shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the child care center if children requiring diapering are in care.
 - (2) The operator shall ensure that diapers are changed promptly and in a sanitary manner when needed.
 - (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
 - (4) The operator shall ensure that soiled or wet diapers are stored in a sanitary, covered container, separate from other garbage and waste until removed from the child care center.

- d. Sleeping.
 - (1) The operator shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
 - (2) The operator shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
 - (3) The operator shall ensure that if an infant falls asleep while not in a crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.
 - (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
 - (5) The operator shall ensure that all items are removed from and that no toys or objects are hung over or attached to the crib or portable crib when an infant is sleeping or preparing to sleep. With written parental permission, the provider may place one individual infant blanket or sleep sack, a pacifier, and a security item that does not pose a risk of suffocation to the infant in the crib or portable crib while the infant is sleeping or preparing to sleep.
 - (6) The operator shall ensure that a staff member responsible for caring for or teaching children checks on sleeping infants regularly and that a monitor is in the room with the infants, unless a staff member is in the room with the infants while the infants are sleeping.
- e. The operator shall ensure that parents of each infant receive a written daily report detailing the infant's sleeping and eating processes for the day, and the infant's diapering schedule for the day.

2. Night care.

- a. Any child care center offering night care shall provide program modifications for the needs of children and their parents during the night.
- b. In consultation with parents, attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care appropriate to the child's needs.
- c. The operator shall encourage parents to leave their children in care and pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parent's work schedule.
- d. The operator shall ensure that children under the age of six are supervised when bathing.
- e. The operator shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available.
- f. The operator shall require each child in night care to have night clothing and a toothbrush marked for identification.

4. Require at least one department-approved first-aid kit maintained and kept in a designated location, ~~inaccessible~~inaccessible to children, yet readily accessible to staff members at all times;
5. Provide a working telephone line immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;
6. Require a plan for responding to minor illnesses and minor accidents when children are in the care of the child care center;
7. Require written permission to dispense medication and proper instructions for the administration of medication obtained from the parent of a child in the child care center who requires medication:
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage, and labeled with the child's name and date;
 - b. Medication must be stored in an area ~~inaccessible~~inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container;
 - c. The operator shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child; and
 - d. The operator shall include completed medication records in the child's record;
8. Require a supervised temporary isolation area designated for a child who is too ill to remain in the child care center or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care is sought as necessary;
9. Establish and implement practices in accordance with guidance obtained through consultation with local health unit authorities or ~~state~~authorities from the public health division of the department of health ~~authorities~~and human services implemented regarding the exclusion and return of children with infectious or communicable conditions. The program may obtain this guidance directly or through current published materials regarding exclusion and return to the child care center;
10. Notify parents, legal custodians, or guardians of a child's exposure to a presumed or confirmed reportable infectious disease;
11. Identify a source of emergency health services readily available to the child care center, including:
 - a. A prearranged plan for emergency medical care in which parents of enrollees are advised of the arrangement; and
 - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent is notified;

- | ~~41.12.~~ Require information be provided to parents, as needed, concerning child health and social services available in the community; and
- | ~~42.13.~~ Require that the child care center inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made a part of the child's record.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

CHAPTER 75-03-11

75-03-11-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Annual" is defined as the provider's licensing year.
- ~~2.~~ "Application" means all forms the department requires when applying or reapplying for a license.
- ~~2.3.~~ "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~3.4.~~ "Assistant" means any individual who works directly with children in a preschool under the supervision of a teacher or a director.
- ~~4.5.~~ "Attendance" means the total number of children present at any one time at the facility.
- ~~5.6.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
- ~~6.7.~~ "Director" means an individual responsible for supervising and organizing program activities in a preschool.
- ~~7.8.~~ "Emergency designee" means an individual designated by the operator to be a backup staff member for emergency assistance or to provide substitute care.
- ~~8.9.~~ "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~9.10.~~ "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a preschool.
- ~~10.11.~~ "Preschool" means a program licensed to provide early childhood services which follows a preschool curriculum and course of study designed primarily to enhance the educational development of the children enrolled and which serves no child for more than three hours per day.
- ~~11.12.~~ "Substitute staff" means staff who work less than thirty-two hours per month, and are not regularly scheduled for work.
- ~~12.13.~~ "Teacher" means an individual with the responsibility of implementing program activities, either as the director or under the supervision of the director.
- ~~13.14.~~ "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-11-13. Minimum health and training requirements for applicants, operators, and staff members.

1. If the physical, cognitive, social, or emotional health capabilities of an applicant, operator, or staff member appears questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.
2. A staff member or household member may not use or be under the influence of any alcoholic beverages or illegal drugs while children are in care.
3. A staff member may not place a child in an environment that is harmful or dangerous to the child's physical, cognitive, social, or emotional health.
4. All staff members responsible for caring for or teaching children shall certify completion of department-approved training related to child care annually.
 - a. A staff member working thirty or more hours per week shall certify a minimum of thirteen hours of department-approved training annually.
 - b. A staff member working fewer than thirty hours and at least twenty hours per week shall certify a minimum of eleven hours of department-approved training annually.
 - c. A staff member working fewer than twenty hours and at least ten hours a week shall certify a minimum of nine hours of department-approved training annually.
 - d. A staff member working fewer than ten hours per week shall certify a minimum of seven hours of department-approved training annually.
 - e. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course.
5. All staff members responsible for caring for or teaching children shall certify completion of a department-approved basic child care course within ninety days of employment.
6. All staff members shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department.
7. All staff members shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in pediatric first aid by a program approved by the department.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; April 1, 2018; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-18. Minimum sanitation and safety requirements.

1. The operator shall ensure that the preschool's bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.

2. The operator shall ensure that the preschool's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and staff members.
3. The operator shall ensure that in preschools where meals are prepared, the ~~state department of public health~~ division of the department of health and human services conducts an annual inspection. If only snacks or occasional cooking projects are prepared, ~~a state department of health~~ an inspection by the public health division of the department of health and human services is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the department or its authorized agent.
4. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
5. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local fire authorities. When the preschool is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
6. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
7. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
8. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
9. The operator shall ensure that elevated areas including stairs and porches have railings and safety gates where necessary to prevent falls.
10. The operator shall take steps to keep the preschool free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the preschool. Insect repellent may be applied outdoors on children with written parental permission.
11. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
12. The operator shall ensure that exit doorways and pathways are not blocked.
13. An operator shall ensure that all preschool buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the

purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.

14. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the preschool and shall empty, clean, and sanitize wading pools daily.
15. All swimming pools used by children must be approved annually by the local health unit.
16. Aquatic activities:
 - a. An operator shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
 - b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
17. Pets and animals.
 - a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The operator shall ensure parents are aware of the presence of pets and animals in the preschool.
 - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall closely supervise all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
 - h. The operator shall ensure that the preschool is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

18. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids.

19. The operator shall ensure that soiled or wet clothes or diapers are stored in a sanitary, covered container, separate from other garbage and waste until removed from the preschool facility.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; July 1, 2020; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the preschool and shall make it available to staff members at all times.
2. The operator shall maintain the following records:
 - a. The child's full name, birth date, current home address, legal names of the child's parents, and current business and personal telephone numbers where they can be reached;
 - b. A written statement from the parents authorizing emergency medical care;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child cannot be reached immediately in an emergency;
 - d. Names and telephone numbers of individuals authorized to take the child from the preschool;
 - e. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the ~~state department of~~public health division of the department of health and human services, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, ~~unless the child is a drop-in child~~; and
 - f. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The operator shall verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents, and to the following, unless otherwise protected by law:
 - a. The authorized agent and department representatives;

- b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
- c. Individuals who possess written authorization from the child's parent. The preschool shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2022; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-23. Discipline - Punishment prohibited.

Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, neglect, or abuse to any child is grounds for license denial or revocation:

1. The preschool must have a written policy regarding the discipline of children. The operator shall provide the policy to, and discuss the policy with, staff members responsible for caring for or teaching children before the preschool begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation.
3. Authority to discipline may not be delegated to children nor may discipline be administered by children.
4. Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of a staff member responsible for caring for or teaching children. A staff member may not isolate a child in a locked room or closet.
5. A child may not be punished for lapses in toilet training.
6. A staff member may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing the child or in the presence of other children.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. A staff member may not force-feed a child or coerce a child to eat unless medically prescribed and administered under a medical provider's care.
9. A staff member may not use deprivation of meals or snacks as a form of discipline or punishment.
10. A staff member, [or household member](#), or any other adult in or at the preschool may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.

11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in the mouth of a child to deter the child from biting other children.
12. A staff member may not withhold active play as a form of discipline or punishment, beyond a brief period of separation.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11-26. Minimum provisions regarding emergency care for children.

The preschool must have written plans to respond to illness and emergencies including burns, serious injury, and ingestion of poison. The operator shall ensure that parents of enrolled children are advised of these plans. Plans must:

1. Establish emergency response procedures;
2. Provide accessible posting of emergency response procedures and require training for all staff members concerning those emergency procedures;
3. Require the availability of at least one working flashlight;
4. Require at least one department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times;
5. Provide a working telephone line immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;
6. Provide a plan for responding to minor illnesses and minor accidents when children are in the care of the preschool, and provide a plan for accessing available medical consultation regarding special care and medication;
7. Require written permission to dispense medication and proper instructions for the administration of medication, obtained from the parent of a child in the preschool who requires medication.
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to dosage and storage, and labeled with the child's name and date;
 - b. Medication must be stored in an area inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container; and
 - c. The operator shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each dose administered, the dosage, the name of the staff member administering the medication, and the name of the child. The operator shall include completed medication records in the child's record;
8. Require a supervised temporary isolation area designated for a child who is too ill to remain in the preschool, or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and

- b. First aid is provided and medical care is sought, as necessary;
9. Identify a source of emergency services available to the preschool, including:
- a. A prearranged plan for emergency medical care in which parents of enrolled children are advised of the arrangement; ~~and~~
 - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume the responsibility for the child's care and until the parent is notified;
10. Establish and implement practices in accordance with guidance obtained through consultation with local health unit authorities or state authorities from the public health division of the department authorities of health and human services regarding the exclusion and return of children with infectious or communicable conditions. The operator may obtain this guidance directly or through current published materials regarding exclusion and return to the preschool;
11. Require information be provided to parents, as needed, concerning child health and social services available in the community; ~~and~~
12. Require that the preschool inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made a part of the child's record; and
13. Notify parents, legal custodians, or guardians of a child's exposure to a presumed of confirmed reportable infectious disease.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 2, 2011; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-27. Effect of conviction on licensure and employment.

- 1. An applicant, operator, or director may not be, and a preschool may not employ or allow, in any capacity that involves or permits contact between the teacher, assistant, emergency designee, ~~or~~ staff member, or household member, and any child cared for by the preschool, an operator, director, staff member, teacher, assistant, ~~or~~ emergency designee, or household member, who has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.2, domestic violence; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that

- section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of an applicant, operator, household member, or director, or the operator in the case of a staff member, teacher, assistant, substitute staff member, or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, operator's, director's, teacher's, assistant's, substitute staff member's, emergency designee's, or a staff member's ability to serve the public as an operator, director, teacher, assistant, emergency designee, or a staff member.
 3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
 4. The operator shall establish written policies and engage in practices that conform to those policies to effectively implement this section, before hiring any directors, staff members, teachers, assistants, substitute staff members, or emergency designees.
 5. An operator shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The operator shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and within five years from the date of initial approval and at least once every five years thereafter. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.
 6. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an

informal conference regarding the review any time before the department has issued its final decision.

- c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective January 1, 1999; amended effective January 2, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11-28. Child abuse and neglect determinations.

An operator shall ensure safe care for the children receiving services in the preschool.

1. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by any applicant, operator, director, teacher, assistant, staff member, substitute staff member, ~~or~~ emergency designee, or household member, it has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that any child has been abused or neglected by the applicant, operator, director, teacher, assistant, staff member, substitute staff member, ~~or~~ emergency designee, or household member, the applicant or operator shall furnish information satisfactory to the department, from which the department can determine the applicant's, operator's, director's, teacher's, assistant's, staff member's, substitute staff member's, or emergency designee's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator.
2. Each applicant, operator, director, teacher, assistant, staff member, substitute staff member, and emergency designee shall complete, and the operator shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.
3. Household members age twelve and older shall complete, and the operator shall submit to the department or its authorized agent, a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the preschool.

History: Effective January 1, 1999; amended effective January 2, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

CHAPTER 75-03-11.1

75-03-11.1-03. Definitions.

The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Annual" is defined as the provider's licensing year.
- ~~2.~~ "Application" means all forms the department requires when applying or reapplying for a license.
- ~~2.3.~~ "Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.
- ~~3.4.~~ "Attendance" means the total number of children present at any one time at the facility.
- ~~4.5.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
- ~~5.6.~~ "Director" means an individual responsible for overseeing the general operation of, and implementing the policies and procedures of, the school-age child care program.
- ~~6.7.~~ "Emergency designee" means an individual designated by the school-age child care program to be a backup staff member for emergency assistance or to provide substitute care.
- ~~7.8.~~ "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~8.9.~~ "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operations of a school-age child care program.
- ~~9.10.~~ "School-age child care program" or "program" means a program licensed to provide early childhood services exclusively to school-age children before and after school, during school holidays, and during summer vacation.
- ~~10.11.~~ "Substitute staff" means staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~11.12.~~ "Supervisor" means any person with the responsibility for organizing and supervising daily program activities.
- ~~12.13.~~ "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-02

75-03-11.1-08.4. Minimum qualifications for all school-age child care program staff members responsible for caring for or teaching children.

1. Each staff member shall be at least sixteen years of age, shall be an individual of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care.

2. a. Each staff member shall certify the staff member's own annual completion of department-approved training related to child care as set forth below:
 - (1) Staff members working more than thirty hours per week shall certify a minimum of thirteen hours of department-approved training annually;
 - (2) Staff members working fewer than thirty hours and at least twenty hours per week shall certify a minimum of eleven hours of department-approved training annually;
 - (3) Staff members working fewer than twenty hours and at least ten hours per week shall certify a minimum of nine hours of department-approved training annually; and
 - (4) Staff members working fewer than ten hours per week shall certify a minimum of seven hours of department-approved training annually.
- b. The same training courses may be counted toward licensing annual requirements only if at least three years has passed since the last completion date of that training course.
3. All staff members responsible for caring for or teaching children shall certify completion of a department-approved basic child care course within ninety days of employment.
4. The director shall provide newly hired staff members with responsibilities for caring for or teaching children a two-day onsite orientation to the child care program during the first week of employment. The director shall document orientation of each staff member on an orientation certification form. The orientation must address:
 - a. Emergency health, fire, and safety procedures for the school-age child care program;
 - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
 - c. Any special health or nutrition problems of the children assigned to the staff member;
 - d. Any special needs of the children assigned to the staff member;
 - e. The planned program of activities at the school-age child care program;
 - f. Rules and policies of the school-age child care program; and
 - g. Child abuse and neglect reporting laws.
5. Staff members shall ensure safe care for children under supervision. For the school-age child, supervision means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected.
6. A staff member may not place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.
7. All staff members shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in infant and pediatric cardiopulmonary resuscitation and the use of an automated external defibrillator by the American heart association, American red cross, or other similar cardiopulmonary resuscitation and automated external defibrillator training programs that are approved by the department.
8. All staff members shall be currently certified within ninety days of employment and prior to staff member having unsupervised access to children under care, in [pediatric](#) first aid by a program approved by the department.

History: Effective January 1, 1999; amended effective January 1, 2011; April 1, 2016; April1, 2018; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-13. Minimum health requirements for all applicants, operators, and staff members.

1. If the physical, cognitive, social, or emotional health capabilities of an applicant, operator, or staff member appear questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.
2. A staff member [or household member](#) may not use or be under the influence of any illegal drugs or alcoholic beverages while caring for children.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-18. Minimum sanitation and safety requirements.

1. In school-age child care programs where meals are prepared, the operator shall ensure that the ~~state department of~~ [public health division of the department of health and human services](#) conducts an annual inspection. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the department or its authorized agent. If only snacks or occasional cooking projects are prepared, ~~a health~~ [an inspection by the public health division of the department of health and human services](#) is not required.
2. The operator shall ensure that the school-age child care program's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.
3. The operator shall ensure that the school-age child care program ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
4. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
5. The operator shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
6. The operator shall ensure that wading pools used by the school-age child care program are strictly supervised and are emptied, cleaned, and sanitized daily.
7. The operator shall ensure that all swimming pools are approved annually by the local health unit.

8. Aquatic activities:
 - a. The operator shall have policies which ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
 - b. The operator may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.
9. The operator shall ensure that all school-age child care program buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the department of environmental quality.
10. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
11. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.
12. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.
13. If the school-age child care program is providing care to children in wheelchairs, the operator shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care.
14. The operator shall ensure that exit doorways and pathways are not blocked.
15. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.
16. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.
17. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the school-age child care program is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
18. The operator shall ensure that school-age child care program bathroom sinks, toilets, tables, chairs, and floors are cleaned daily.
19. The operator shall ensure that personal items including combs and toothbrushes are individually identified and stored in a sanitary manner.

20. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and paper towels, sanitary hand-drying equipment, or single-use or individually designated cloth towels must be available at each sink.
21. The operator shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
22. Water supply standards:
 - a. The operator shall ensure that the school-age child care program has a drinking supply from an approved community water system or from a source tested and approved annually by the department of environmental quality;
 - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups; and
 - c. The school-age child care program must have hot and cold running water.
23. Toilet and sink facilities:
 - a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members;
 - b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping;
 - c. A minimum of one flush toilet must be provided for each fifteen children;
 - d. The operator shall provide separate restrooms for boys and girls and shall ensure that partitions are installed to separate toilets in these restrooms;
 - e. The operator shall provide at least one handwashing sink per toilet room facility; and
 - f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.
24. The operator of a school-age child care program not on a municipal or public water supply or wastewater disposal system shall ensure the school-age child care program's sewage and wastewater system has been approved by the department of environmental quality.
25. Laundry:
 - a. If the school-age child care program provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation;
 - b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation;
 - c. The operator shall ensure that in all new or extensively remodeled school-age child care programs, the handling, sorting, or washing of soiled linens or blankets takes place in a

- designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas;
- d. The operator shall ensure that in an existing school-age child care program where physical separation of laundry and kitchen areas is impractical, procedures are developed to prohibit the washing or transportation of laundry while meals are being prepared or served;
 - e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas;
 - f. If the school-age child care program provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius]; and
 - g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the program shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].
26. The operator shall take steps to keep the school-age child care program free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the school-age child care program. Insect repellent may be applied outdoors on children with written parental permission.
27. Pets and animals:
- a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.
 - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
 - c. The operator shall ensure parents are aware of the presence of pets and animals in the school-age child care program.
 - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
 - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
 - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
 - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.

- h. The operator shall ensure that the school-age child care program is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
28. The operator shall ensure that beds, cots, mats, or cribs, complete with a mattress or pad, are available and the operator shall ensure:
- a. Pillows and mattresses have clean coverings.
 - b. Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
 - c. If beds, cots, mats, or cribs are used by different children, sheets and pillowcases are laundered before use by other children.
 - d. Cots, mats, or cribs are cleaned as often as necessary for cleanliness and hygiene, at least weekly, and after each use if used by different children;
 - e. That cots, mats, and cribs are single occupancy.
 - f. Each bed, cot, or mat has sufficient blankets available.
 - g. That aisles between beds, cots, mats, or cribs are a minimum space of two feet [60.96 centimeters] and are kept free of all obstructions while beds, cots, mats, or cribs are occupied.
 - h. Provide separate storage for personal blankets or coverings.
 - i. That mattresses and sheets are properly fitted.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2016; April 1, 2018; July 1, 2020; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the school-age child care program and shall make it available to staff members at all times.
2. The operator shall maintain the following records and shall keep copies at the school age program premises where the child is enrolled:
 - a. The child's full name, birth date, and current home address;
 - b. Legal names of the child's parents, and current business and personal telephone numbers where they can be reached;
 - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individual legally responsible for the child cannot be reached immediately in an emergency;
 - d. A written statement from the parents authorizing emergency medical care;
 - e. Names and telephone numbers of individuals authorized to take the child from the school-age child care program; ~~and~~
 - f. [Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the public health division of the department of health and human](#)

services, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs; and

- g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.
3. The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents, and to the following, unless protected by law:

 - a. The authorized agent and department representatives;
 - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
 - c. Individuals who possess written authorization from the child's parent. The school-age child care program shall have a release of information form available and shall have the form signed prior to the release of information.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; April 1, 2016; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-23. Discipline - Punishment prohibited.

Disregard of any of the following disciplinary rules or disciplinary measure resulting in physical or emotional injury, neglect, or abuse to any child is grounds for license denial or revocation.

1. The school-age child care program must have a written policy regarding the discipline of children. The operator shall provide the policy to, and discuss the policy with, the staff members before the school-age child care program begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation.
3. Authority to discipline may not be delegated to children nor may discipline be administered by children.
4. Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of a staff member responsible for caring for or teaching children. A staff member may not isolate a child in a locked room or closet.
5. A child may not be punished for lapses in toilet training.

6. A staff member may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing a child or in the presence of a child.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. A staff member may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a medical provider's care.
9. A staff member may not use deprivation of meals or snacks as a form of discipline or punishment.
10. A staff member, household member, or any other adult at the school-age child care program may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
12. A staff member may not withhold active play from children as a means of discipline or punishment, beyond a brief period of separation.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; January 1, 2023.

General Authority: NDCC 50-11.1-01, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-24. Specialized types of care and minimum requirements.

1. Night care.

- a. Any school-age child care program offering night care shall provide program modifications for the needs of children and their parents during the night;
- b. In consultation with parents, attention must be given by the staff member responsible for caring for or teaching children to provide for a transition into this type of care appropriate to the child's needs;
- c. The operator shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parent's work schedule;
- d. The operator shall ensure that comfortable beds and cots, complete with a mattress or pad, are available;
- e. The school-age child care program shall require each child in night care to have night clothing and a toothbrush marked for identification; and
- f. The operator shall ensure that during sleeping hours, staff members responsible for caring for or teaching children are awake and within hearing range to provide for the needs of children and to respond to an emergency.

2. Drop-in school-age child care.

- a. If a school-age child care program serves drop-in children, it shall be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program and to maintain the proper staff member to child ratio.

- b. The operator shall ensure that the program reflects the individual needs of the children who are provided drop-in care.
 - c. The operator shall ensure that admission records comply with all enrollment requirements contained in section 75-03-11.1-22.
 - d. The operator shall ensure that admittance procedures provide for a period of individual attention for the child to acquaint the child with the school-age child care program, its equipment, and the staff members.
 - e. A school-age child care program may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the school-age child care program to exceed the total number of children for which the school-age child care program is licensed.
3. **Drop-in school-age child care programs.** An operator shall ensure that a school-age child care program serving only drop-in care children complies with this chapter, but is exempt from the following provisions:
- a. Subsections 12, 14, and 15 of section 75-03-11.1-20; subdivision f of subsection 42 of section 75-03-11.1-22; and subsection 1 of section 75-03-11.1-25; and
 - b. A school-age child care program serving only drop-in children is exempt from the outdoor space requirements.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; April 1, 2018; [January 1, 2023](#).

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-26. Minimum provisions regarding emergency care for children.

The school-age child care program shall have written plans to respond to illness, accidents, and emergencies, including burns, serious injury, and ingestion of poison. The operator shall ensure that parents of enrolled children are advised of these plans. Plans must:

1. Establish emergency response procedures;
2. Provide accessible posting of emergency response procedures and training for all staff members concerning those emergency procedures;
3. Require the availability of at least one working flashlight;
4. Require at least one department-approved first-aid kit be maintained and kept in each major activity area, inaccessible to children, yet readily accessible to staff members at all times;
5. Provide a working telephone immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;
6. Require that the program inform parents in writing of any first aid administered to their child within twenty-four hours of the incident and immediately notify parents of any injury which requires emergency care beyond first aid, and require an injury report to be made a part of the child's record;
7. Require a plan for responding to minor illnesses and minor accidents when children are in the care of the school-age child care program;

8. Require written permission to dispense medication and require proper instructions for the administration of medication be obtained from the parent of a child in the school-age child care program who requires medication:
 - a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to its dosage and storage, and labeled with the child's name and date.
 - b. The program shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. The program shall include completed medication records in the child's record.
 - c. Medication must be stored in an area inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container;
9. Require a supervised, temporary isolation area be designated for a child who is too ill to remain in the school-age child care program, or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
 - a. Parents are notified immediately and asked to pick up their child; and
 - b. First aid is provided and medical care sought, as necessary;
10. Establish and implement practices in accordance with guidance obtained through consultation with local health unit authorities or ~~state department of health~~-authorities from the public health division of the department of health and human services regarding the exclusion and return of children with infectious or communicable conditions. The program may obtain this guidance directly or through current published material regarding exclusion and return to the school-age child care program;
11. Notify parents, legal custodians, or guardians of a child's exposure to a presumed or confirmed reportable infectious disease;
12. Identify a source of emergency health services readily available to the school-age child care program, including:
 - a. A prearranged plan for emergency medical care in which parents of enrolled children are advised of the arrangement; and
 - b. Provisions for emergency transportation, specifically when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent is notified; and
- ~~12.13.~~ Require information be provided to parents, as needed, concerning child health and social services available in the community.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011; January 1, 2023.

General Authority: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01

75-03-11.1-27. Effect of conviction on licensure and employment.

1. An applicant, operator, director, or supervisor may not be, and a school-age child care program may not employ or allow, in any capacity that involves or permits contact between the

emergency designee, substitute staff member, ~~or~~ staff member, or household member and any child cared for by the school-age child care program, an operator, emergency designee, substitute staff member, director, supervisor, ~~or~~ staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:

- a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code section 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-01.2, domestic violence; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; 14-09-22, abuse of child; or 14-09-22.1, neglect of child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a school-age child care program applicant, operator, director, ~~or~~ supervisor, or household member, or the school-age child care program operator in the case of an emergency designee, substitute staff member, or staff member, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.
 3. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07, harassment; 12.1-17-07.1, stalking; in the case of a class B misdemeanor offense described in North Dakota Century Code section 12.1-17-01.2, domestic violence; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
 4. The operator shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section before hiring any staff member.
 5. An operator shall submit an application for a fingerprint-based criminal history record check at the time of application and within five years from the date of initial approval and at least once every five years thereafter. The operator shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and within five years

~~form~~from the date of initial approval and at least once every five years thereafter. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department shall submit a request to the bureau of criminal investigation for a nationwide name-based criminal history record check.

6. Review of fingerprint-based criminal history record check results.
 - a. If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
 - b. The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
 - c. The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; April 1, 2014; April 1, 2016; April 1, 2018; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11.1-28. Child abuse and neglect decisions.

An operator shall ensure safe care for the children receiving services in the school-age child care program.

1. If a confirmed decision made under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists, indicating that a child has been abused or neglected by an applicant, operator, director, supervisor, emergency designee, substitute staff member, ~~or~~ staff member, or household member, that decision has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a confirmed determination under North Dakota Century Code chapter 50-25.1 or a similar finding in another jurisdiction which requires proof of substantially similar elements exists indicating that a child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, ~~or~~ staff member, or household member, the applicant or operator shall furnish information satisfactory to the department from which the department can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator.
2. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete, and the operator shall submit to the department or its authorized agent, a department-approved authorization for background check form no later than the first day of employment.

3. Household members age twelve and older shall complete, and the operator shall submit to the department or its authorized agent, a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the school-age child care.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011; January 1, 2013; April 1, 2014; April 1, 2016; July 1, 2020; January 1, 2022; January 1, 2023.

General Authority: NDCC 50-11.1-04, 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

CHAPTER 75-08-01

75-08-01-01. Definitions.

In this chapter:

1. "Appeal" means a request for an impartial due process hearing or an impartial due process hearing to resolve the issue under dispute.
2. "Assistive technology device", also referred to as "rehabilitation technology device", means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, used to increase, maintain, or improve the functional capabilities of an individual with disabilities.
3. "Assistive technology service", also referred to as "rehabilitation technology service", means a service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.
4. "Client assistance program" means the program that informs and advises an individual of all available benefits under the Rehabilitation Act, as amended, and, if requested, may assist and advocate for the individual in matters related to the division's decisions and services. Client assistance program services include assistance and advocacy in pursuing mediation, administrative, legal, or other appropriate remedies for the protection of the rights of an individual.
5. "Department" means the North Dakota department of human services.
6. "Division" means the vocational rehabilitation division of the department.
7. "Employment outcome" means, in a manner consistent with this chapter:
 - a. Entering, advancing in, or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market;
 - b. Supported employment; or
 - c. Satisfying any other type of employment in an integrated setting that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including self-employment, telecommuting, and business ownership.
8. "Existing data" means information from any source that currently exists that describes the current functioning of the individual and may be available to the division for an eligibility determination. The school records of an individual are considered to be existing data; however, the division may request additional information if there is an indication of changes in functioning or if there is conflicting information.
9. "Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with section 14(c) of the Fair Labor Standards Act.
10. "Extreme medical risk" means a risk of increasing functional impairment or risk of death if medical services, including mental health services, are not provided expeditiously.
11. "Individual with a disability" means any individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment or from advancing in employment and who can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to this chapter.

12. "Individual with a most significant disability" means an individual:
 - a. Who meets the criteria for a significant disability, and is seriously limited in two or more functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and
 - b. Who requires multiple core services over an extended period of time of six months or more.
13. "Individual with a significant disability" means:
 - a. An individual who is receiving social security disability insurance or supplemental security income; or
 - b. An individual:
 - (1) Who has severe physical or mental impairments that seriously limit the individual's functional capacity, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome;
 - (2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time of six months or more; and
 - (3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.
14. "Informed choice" means a choice based on disclosure of facts and alternatives to allow a person to make decisions based on relevant information, options, and consequences.
15. "Mediation" means using an independent third party to assist vocational rehabilitation applicants and clients in settling differences or disputes prior to formal action regarding vocational rehabilitation decisions or services.
16. "Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be necessary in order to achieve an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. Personal assistance services may include training in managing, supervising, and directing personal assistance services.
17. "Postsecondary training" means training offered by institutions that qualify for federal financial student aid and is provided only when necessary to achieve a vocational goal consistent with an individual's capabilities and abilities.
18. "Pre-employment transition services" means services for all students with disabilities in need of such services, without regard to the type of disability, and which must be made available to

students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.

19. "Qualified rehabilitation professional" means a vocational rehabilitation counselor ~~or administrator who meets educational and experience standards consistent with requirements for certification by the commission on rehabilitation counseling certification~~ who has obtained a baccalaureate degree in a field of study reasonably related to vocational rehabilitation and has indicated a level of competency and skill demonstrating basic preparation in a field of study that reasonably prepares the individual to work with consumers and employers.
20. "Student with a disability" means an individual with a disability in a secondary, postsecondary, or other recognized education program who:
 - a. Is not younger than the earliest age for the provision of transition services under the Individuals with Disabilities Education Act [20 U.S.C. 1414(d)(1)(A)(i)(VIII)] and is not older than twenty-one years of age;
 - b. Is a student who is an individual with a disability, for purposes of section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794]; or
 - c. Is a student who is eligible for and receiving special education services under part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.].
21. "Substantial impediment to employment" means that a physical or mental impairment in light of attendant medical, psychological, vocational, educational, communication, and other related factors hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment, consistent with the individual's abilities and capabilities.
22. "Suitable" means consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual.
23. "Supported employment" means competitive integrated employment, in which an individual with a most significant disability, including a youth with a most significant disability, is working toward employment that is consistent with their individualized plan for employment. The following terms are defined concerning supported employment:
 - a. "Competitive employment" means work that, at the time of transition to extended services, is performed on a full-time or part-time basis, as determined in the individualized plan for employment, and for which an individual is compensated at or above the federal minimum wage.
 - b. "Extended services" means ongoing support services that are:
 - (1) Needed to support and maintain an individual with a most significant disability in supported employment;
 - (2) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining employment;
 - (3) Based on the needs of an eligible individual, as specified in an individualized plan for employment;
 - (4) Provided by a state agency, private nonprofit organization, employer, or any other appropriate resource after an individual has been determined stable in employment and has made the transition from support from the division; and

- (5) Provided to a youth with a most significant disability, who will not immediately be able to access extended services from an alternative source. The division shall provide extended services for a period not to exceed four years, or at such time that a youth reaches age twenty-five and no longer meets the definition of a youth with a disability, whichever occurs first. The division may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.
 - c. "Integrated setting" means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals.
 - d. "Ongoing support services" is as defined in 34 C.F.R. 361.5.
 - e. "Time-limited services" means support services provided by the division for a period not to exceed twenty-four months, unless a longer period to achieve job stabilization has been established in the individualized plan for employment, before the individual transitions to extended services.
24. "Trial work experiences" means an exploration of an individual's abilities, capabilities, and capacity to perform realistic work in the most integrated setting possible in which appropriate support and training are provided.
25. "Vocational goal" means an employment outcome.
26. "Youth with a disability" means an individual with a disability who:
- a. Is at least fourteen years of age; and
 - b. Is not older than twenty-four years of age.
27. "Youth with a most significant disability" means an individual with a disability who:
- a. Is at least fourteen years of age;
 - b. Is not older than twenty-four years of age;
 - c. Meets the criteria for a most significant disability, and is seriously limited in two or more functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and
 - d. Requires multiple core services over an extended period of time of six months or more.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019; [January 1, 2023](#).

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06.1

75-08-01-37. Vocational rehabilitation determinations - Administrative review procedures - Appeals.

- 1. As used in this section:
 - a. "Claimant" means an applicant or eligible individual who is dissatisfied with any determination made by the division that effects the provisions of vocational rehabilitation services and who has made a timely request for review of the determination.

- b. "Party" or "parties" refers to the division and to a claimant.
 - c. "Request for review" means a request for informal review, mediation, or an appeal under this section.
2. The division shall inform each individual applying for or receiving vocational rehabilitation services of the availability of mediation services, the name and address of the division's chief of field services, the manner in which a mediator may be selected, and the availability of the client assistance program to assist the individual during mediation sessions. The division shall provide the right to mediation notice at the time the:
 - a. Individual applies for vocational rehabilitation services;
 - b. Individual is assigned to a category set forth in section 75-08-01-23;
 - c. Individualized plan for employment is developed; and
 - d. Whenever the vocational rehabilitation services for an individual are reduced, suspended, or terminated.
3. The division shall inform each individual applying for or receiving vocational rehabilitation services of the appeals procedure, the name and address of the division's chief of field services, the manner in which an impartial hearing officer may be selected, and the availability of the client assistance program. The division shall provide the right to appeal notice at the time the:
 - a. Individual applies for vocational rehabilitation services;
 - b. Individual is assigned to a category set forth in section 75-08-01-23;
 - c. Individualized plan for employment is developed; and
 - d. Whenever the vocational rehabilitation services for an individual are reduced, suspended, or terminated.
4. The division shall make reasonable accommodation of the individual's disability in the conduct of the process that is undertaken to review the determination with which the claimant is dissatisfied.
5. Nothing in this chapter may be construed to forbid any informal, mutually consensual meetings or discussions between the individual and the division.
6. A claimant who is dissatisfied with any determination made by the division that affects the provision of vocational rehabilitation services may request a timely review of that decision to the division, by requesting an informal review, mediation or appeal hearing. A request for review is timely if the filing date of the request is no more than thirty days after notice of the determination with which the claimant is dissatisfied. If appropriate, any request for review may be made through claimant's authorized representative.
7. A claimant's appeal may not result in suspension, reduction, or termination of vocational rehabilitation services pending resolution of claimant's appeal unless:
 - a. The claimant or, in appropriate cases, the claimant's authorized representative, requests a suspension, reduction, or termination of services; or
 - b. There is evidence fraud has occurred or the vocational rehabilitation services were obtained through misrepresentation, collusion, or criminal conduct by claimant or claimant's authorized representative.

8. A claimant may request an informal review to resolve the decision under dispute without mediation or an appeal hearing. A claimant's request for informal review does not prohibit claimant of the right to an appeal hearing or mediation.
 - a. A claimant may not be required to go through an informal review prior to, or instead of, an appeal hearing.
 - b. A written request for an informal review must be made by claimant to division within thirty days of the determination with which claimant is dissatisfied.
 - c. The informal review must be conducted by either the division's chief of field services, or a division employee appointed by the chief of field services, who has had no prior involvement in the case.
 - d. An informal review must be conducted within fifteen days of the initial request unless both parties agree additional time is necessary. Informal review may not delay an appeal hearing if one has been requested. The appeal hearing must be conducted within sixty days of the claimant's request for review of a determination made by division with which claimant is dissatisfied, unless the division and the claimant agree to a specific extension of time.
 - e. The informal review process, if completed, must result in a decision by the division regarding the division's determination under dispute. The division shall notify claimant by writing of the decision within ten days of the informal review, unless circumstances require additional time.
 - f. If the informal review does not resolve the issue, the claimant, or authorized representative, may request an appeal hearing or mediation. The claimant shall notify division within fifteen days of the informal review decision that the claimant ~~wish~~wishes to proceed with mediation or an appeal hearing.
9. The claimant may request mediation by a qualified and impartial mediator as a means to resolve a dispute with a decision by the division. Both parties must agree to the request. The claimant may bring an authorized representative to assist during the mediation process. A claimant's request for mediation does not prohibit claimant of the right to an appeal hearing.
 - a. The request for mediation must be submitted, in writing, to the division within thirty days of the disputed decision, or within fifteen days of issuance of the informal review decision. The request shall identify the decision being disputed, why it is being disputed, and what solution is requested.
 - b. A qualified and impartial mediator arranged by the division, pursuant to written division policy, must be provided at no cost to the claimant. Mediation sessions must be held in a location and manner convenient to the claimant and the division.
 - c. The claimant or, if appropriate, the claimant's authorized representative, must be given the opportunity to submit evidence and other information that supports the claimant's position.
 - d. Mediation may not delay the claimant's right to pursue an appeal hearing unless both parties agree additional time is necessary. The appeal hearing must be conducted within sixty days of the claimant's request for review of a determination made by division with which claimant is dissatisfied, unless the division and the claimant agree to a specific extension of time.
 - e. If an agreement is reached pursuant to mediation, the consensus reached by both parties must be documented in writing by the mediator and provided to both parties.

Each party shall sign the agreement, which indicates agreement with its terms and a commitment to fulfill each party's respective responsibilities. If agreement on all issues is reached, the parties shall withdraw any pending informal review or appeal hearing request.

- f. At any point in the mediation process, either party may elect to terminate mediation.
 - g. If mediation is not successful, the claimant may request an appeal hearing regarding the decision under dispute.
 - h. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent proceedings.
 - i. Costs of mediation must be paid by the division. The division is not required to pay for legal or other representation for claimant.
10. A claimant may request an appeal hearing to resolve the decision under dispute without having requested or engaging in mediation or an informal review.
- a. Written request for an appeal hearing must be made to division within thirty days of the determination with which the claimant is dissatisfied.
 - b. A hearing by an impartial hearing officer selected by the division must be conducted within sixty days of the claimant's request for review of a determination made by the division with which claimant is dissatisfied, unless resolution is achieved before that time, or the parties agree to an extension.
 - c. The claimant or, if appropriate, the claimant's authorized representative, must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence.
 - d. The impartial hearing officer shall:
 - (1) Make a decision based on federal vocational rehabilitation regulations and state regulations and policies consistent with federal requirements; and
 - (2) Provide to the claimant or, if appropriate, the claimant's authorized representative, and to the division a full written report of the findings and grounds for the decision within thirty days of the completion of the hearing.
 - e. The hearing officer's decision is final.

History: Effective January 1, 2019; [amended effective January 1, 2023](#).

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-04, 50-06.1-10

TITLE 89
WATER COMMISSION

JANUARY 2023

ARTICLE 89-01
GENERAL ADMINISTRATION

Chapter
89-01-01 Organization of Water Commission and Department of Water Resources

CHAPTER 89-01-01

ORGANIZATION OF WATER COMMISSION AND DEPARTMENT OF WATER RESOURCES

Section
89-01-01-01 ~~Organization and Functions of the Water Commission~~ History
89-01-01-02 Water Commission Organization and Functions
89-01-01-03 Department of Water Resources Organization and Functions

~~89-01-01-01. Water commission organization and functions~~ History.

~~1. Commission history.~~ The North Dakota state water commission was established in 1937, as an emergency measure during the prolonged drought. The legislation, codified as North Dakota Century Code chapter 61-02, contains a preamble that provides an insight into the legislative intent for creating the commission, a state agency. North Dakota Century Code section 61-02-01 states:

~~It is hereby declared that the general welfare and the protection of the lives, health, property, and the rights of all the people of this state require that the conservation, management, development, and control of waters in this state, public or private, navigable or nonnavigable, surface or subsurface, the control of floods, and the management of the atmospheric resources, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. It is declared further that any and all exercise of sovereign powers of this state in investigating, constructing, maintaining, regulating, supervising, and controlling any system of works involving such subject matter embraces and concerns a single object, and that the state water commission in the exercise of its powers, and in the performance of all its official duties, shall be considered and construed to be performing a governmental function for the benefit, welfare, and prosperity of all the people of this state.~~

The office of the state engineer was established in 1905. As initially created, the state engineer had many responsibilities, including as an ex-officio state coal mine inspector, as well as the chief engineer and secretary for the newly created highway commission. Eventually the state engineer's focus shifted to water-oriented responsibilities.

The water commission was created as a separate state agency in 1937, as an emergency measure during the prolonged drought. The law originally provided the state engineer was the commission's chief technical adviser, but that such responsibilities would be in addition to the engineer's regular duties as state engineer. In 1941, the law was amended to provide the state engineer would be the commission's secretary and chief engineer.

From 1937 through approximately 1977, the legislative assembly often vested either the water commission or state engineer with particular authority regarding water-related issues without any expressed reason or clear consistency. This ~~comingling~~commingling of regulatory authority created confusion, and likely led to the convention of referring to both the water commission and the office of the state engineer collectively as the commission. Finally in 1981, the legislative assembly passed a bill amending several sections and chapters of law to clarify the intent that:

[w]henver the term "water conservation commission", "water commission", or "commission", or any derivative of those terms, which when used in context, indicates an intention to refer to that commission regarding [regulatory duties, those terms] shall be construed as granting full administrative and enforcement authority to the state engineer.

1981 N.D. Sess. Laws ch. 365 § 6. As such, the office of state engineer, rather than the water commission, ~~is~~was the agency charged with enforcing ~~many~~most water-related regulations.

- ~~2. **Commissioners.** Two commissioners, the governor and the agriculture commissioner, are statewide officials elected for four-year terms. Eight commissioners representing the eight major drainage basins are appointed by the governor for staggered six-year terms. The governor is the commission's chairman and the governor designates a vice chairman.~~
- ~~3. **Commission secretary.** The state engineer is the commission's statutory secretary and chief engineer. The secretary assists the commission by coordinating commission operations and relieving individual commissioners of administrative detail.~~
- ~~4. **Commission divisions.** The commission consists of the following divisions:
 - ~~a. Administrative and support services.~~
 - ~~b. Atmospheric resources.~~
 - ~~c. Planning and education.~~
 - ~~d. Regulatory.~~
 - ~~e. Water appropriation.~~
 - ~~f. Water development.~~~~
- ~~5. **Commission division functions.**
 - ~~a. Administrative and support services. The administrative services division provides accounting, budget, and fiscal control services, personnel functions, support services for other agency divisions, and other administration functions; provides coordination in water resource programs with federal agencies, state agencies, and local entities; provides support services, including the agency's information technology infrastructure and related technology resources development and maintenance.~~
 - ~~b. Regulatory. The regulatory division assists and advises the state engineer in state law, administrative rule, and policy enforcement on the state's sovereign land; authorizes surface water management projects, such as dikes, dams, and drainage features; facilitates the state's participation in the Federal Emergency Management Agency's dam~~~~

safety, national flood insurance, and cooperating technical partners programs; coordinates the state's participation in the army corps of engineers' silver jackets program; and provides technical and programmatic assistance to water resource districts.

c. ~~Planning and education. The planning and education division develops and maintains the state water management plan; participates in international, regional, state, local, interagency, and interoffice planning efforts; manages the agency's water education programs; provides technical assistance; coordinates environmental reviews; and manages the cost-share and municipal, rural, and industrial programs. When activated, the division also manages the state drought disaster livestock water supply project assistance program.~~

d. ~~Water appropriation. The water appropriation division assists and advises the state engineer in appropriating and managing the state's waters for beneficial use; collects, stores, interprets, and disseminates hydrologic and water quality data and uses that data to evaluate and make recommendations concerning water permit applications; conducts investigations and exploratory studies to optimize the state's water resources use and administers and enforces state law, administrative rules, and policies pertaining to water use.~~

e. ~~Water development. The primary water development division functions involve water resource management and water resource project development, with emphasis on surface water. This includes hydrologic investigation, special studies, and water management project construction, such as dams, dikes, ditches, irrigation projects, water supply systems, and pump structures.~~

f. ~~Atmospheric resources. The atmospheric resource board was created by the legislative assembly in 1975, and was known as the weather modification board. The weather modification board was a division of the state aeronautics commission. In 1981, the board was placed under the water commission's direction and supervision. The primary atmospheric resources division functions involve regulation of weather modification operations regulation, monitoring, and evaluation and weather modification research and development. The atmospheric resource board consists of the state aeronautics commission director, a department of environmental quality representative, the state engineer, and seven additional members appointed by the governor from seven districts within the state.~~

6. ~~**Inquiries.** Inquiries regarding the water commission and state engineer may be addressed as follows:~~

~~North Dakota State Water Commission
State Office Building
900 East Boulevard Avenue
Bismarck, North Dakota 58505-0850
(701) 328-2750
www.swc.nd.gov~~

7. ~~**Organizational chart.** The commission's descriptive organizational chart is attached to this section as an appendix.~~

In August 2021, House Bill No. 1353 of the sixty-seventh legislative assembly replaced the office of the state engineer with the department of water resources, which is led by a director. The department's primary functions are to promote statewide water management policies, enforce water-related regulations, and provide staff and engineering services for commission initiatives.

History: Amended effective August 1, 1983; November 1, 1985; October 1, 1987; November 1, 1989; December 1, 1989; February 1, 1992; February 1, 1993; April 1, 1994; December 1, 1997; February 1, 2003; April 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02.1~~61-02-11, 61-03-13

Law Implemented: NDCC ~~28-32-02.1~~61-02-11, 61-03-13

89-01-01-02. Water commission organization and functions.

1. **Commissioners.** North Dakota Century Code section 61-02-04 regulates commission membership. Two commissioners, the governor and the agriculture commissioner, are statewide officials elected for four-year terms. Eight commissioners representing the eight major drainage basins are appointed by the governor for staggered six-year terms. Under North Dakota Century Code section 61-02-05, the governor is the commission's chairman, and the governor designates a vice chairman.
2. **Commission secretary.** From 1941 through July 2021, the state engineer was the commission's statutory secretary. On August 1, 2021, the director of the department of water resources became the commission's statutory secretary. The secretary assists the commission by coordinating commission operations and relieving individual commissioners of administrative detail.
3. **Commission functions.** The commission's primary functions are to review and consider cost-share requests from project sponsors seeking financial assistance, and to foster and promote water resources development throughout the state, including southwest pipeline project construction, northwest area water supply project construction and operation, and operation and maintenance of the Devils Lake outlets.

History: Effective January 1, 2023.

General Authority: NDCC 61-02-11

Law Implemented: NDCC 61-02-14

89-01-01-03. Department of water resources organization and functions.

1. **Director.** The department is now headed by the director, who is a member of the governor's cabinet. The director provides overall leadership and decisionmaking, has hiring responsibilities, and oversees the department staff. The director also acts as a liaison between the department and the legislative and executive branches of state government, as well as a liaison between the governor and the federal government on water-related issues.
2. **State Engineer.** The state engineer, under North Dakota Century Code section 61-03-01.3, is responsible for associated technical duties related to public safety and property protection, including dam safety, water appropriations, and construction and drainage permits. The state engineer also may act as the director's designee at the director's discretion when implementing any provision of this title.
3. **Department functions.** The department consists of several divisions, with the division directors reporting to the department's director. Several of the divisions are responsible for providing staff support to the commission functions, including management of the cost-share assistance program; maintaining a water project inventory and water development plan; representing the commission on regional, national, and international natural resources planning bodies; assisting water resource boards; preparing engineering and feasibility reports and designs for construction, maintenance, and major repair of water resources projects throughout the state; and general accounting, budgeting, information technology, and support services.

Other divisions are responsible for assisting and advising the director and the state engineer in state law, administrative rule, and policy enforcement. The responsibilities of these regulatory enforcement divisions include reviewing and making recommendations on permit applications for drains, dikes, dams, and sovereign lands; administering the state's dam safety program; assisting communities with floodplain management; conducting navigability determinations and ordinary high water mark delineations; conducting analysis and providing recommended decisions on water permit applications; monitoring and balancing water use and availability throughout the state; enforcing the water permitting system; and developing and maintaining permit records.

The commission also supervises the atmospheric resources board, which is a quasi-judicial, quasi-legislative advisory and rulemaking board that functions as a division of the department. The atmospheric resources board licenses weather modification contractors and permits cloud seeding operations and research activities; conducts research into atmospheric research and cloud seeding technology; and monitors, collects, and disseminates precipitation and climate data.

History: Effective January 1, 2023.

General Authority: NDCC 61-03-13

Law Implemented: NDCC 61-03-01.3

CHAPTER 89-02-01

DRAINAGE OF PONDS, SLOUGHS, LAKES, SHEETWATER, OR ANY SERIES THEREOF

Section

89-02-01-01	Intent [Repealed]
89-02-01-02	Definitions
89-02-01-03	Permit Required
89-02-01-04	Permits for Assessment Drains [Repealed]
89-02-01-05	Exceptions to the Need for a Permit
89-02-01-06	Determination of Watershed Area
89-02-01-07	Filing Application
89-02-01-08	Referral of Applications to Appropriate District
89-02-01-09	Criteria for Determining Whether Drainage Is of Statewide or Interdistrict Significance
89-02-01-09.1	Board Procedure for Processing Applications to Drain
89-02-01-09.2	Evaluation of Applications - Factors Considered
89-02-01-09.3	Time for Determination by Board
89-02-01-09.4	Evaluation of Applications by the State Engineer Director of Statewide or Interdistrict Significance - Information to Be Used
89-02-01-09.5	Procedure, Availability, and Contents of Notice of State Engineer's Director's Decision to Grant or Deny Application of Statewide or Interdistrict Significance
89-02-01-09.6	Request for State Engineer's Department's Hearing
89-02-01-09.7	Notice of State Engineer's Department's Hearing
89-02-01-09.8	Evidence at the State Engineer's Department's Hearing
89-02-01-09.9	Time for Determination by the State Engineer Director - Copies of Decision
89-02-01-09.10	Consideration of Evidence Not Contained in the State Engineer's Department's Record
89-02-01-09.11	Conditions to Permits
89-02-01-09.12	Extending Time to Complete Construction of Drain
89-02-01-10	District Hearing on Applications of Statewide or Interdistrict Significance [Repealed]
89-02-01-11	Emergency Drainage [Repealed]
89-02-01-12	Notice of District Hearing [Repealed]
89-02-01-13	Content of Notice of Hearing [Repealed]
89-02-01-14	Affidavit of Mailing and Affidavit of Notice [Repealed]
89-02-01-15	Time for Determination by Board of Managers [Repealed]
89-02-01-16	Consideration by the State Engineer and Districts [Repealed]
89-02-01-17	Approval of Drainage Permit Applications by District [Repealed]
89-02-01-18	Denial of Application by the District [Repealed]
89-02-01-18.1	Notice by State Engineer of Public Hearing on Application of Statewide or Interdistrict Significance [Repealed]
89-02-01-18.2	Evidence Presented at the State Engineer's Public Hearing [Repealed]
89-02-01-19	Consideration by State Engineer of Applications of Statewide or Interdistrict Significance [Repealed]
89-02-01-20	Criteria to Determine Whether Drainage Will Adversely Affect Lands of Lower Landowners [Repealed]
89-02-01-20.1	Time for Determination by the State Engineer [Repealed]
89-02-01-20.2	Consideration of Evidence Not Contained in the Record [Repealed]
89-02-01-21	Conditions to Permits [Repealed]
89-02-01-22	Requirements for a Valid Permit to Drain [Repealed]
89-02-01-23	Procedure Upon Complaint of Violation [Repealed]
89-02-01-24	Enforcement Action Without Receipt of Complaint [Repealed]
89-02-01-25	Criminal Complaint [Repealed]
89-02-01-26	Ditches or Drains Existing for Ten Years or More [Repealed]
89-02-01-27	Notice of Drainage Application Denials to Commissioner of Agriculture [Repealed]
89-02-01-28	Landowner Assessment Appeal to State Engineer Department

89-02-01-02. Definitions.

Unless the context otherwise requires, the following definitions apply:

1. "Assessment drain" is defined in North Dakota Century Code section 61-16.1-02.
2. "Board" is defined in North Dakota Century Code section 61-21-01.
3. "District" means water resource district.
4. "Drain" is defined in North Dakota Century Code section 61-21-01.
5. "Department" is defined in North Dakota Century Code section 61-03-01.2.
6. "Director" is defined in North Dakota Century Code section 61-03-01.2.
7. "Emergency" means a situation that will cause significant damage to people or property if not addressed immediately and that would not occur under normal circumstances. An emergency may exist because of an extremely wet hydrologic cycle. Damages caused by deliberate acts may not constitute an emergency.
- 6:8. "Lake" means a well-defined basin that characteristically holds water throughout the year. Lakes go dry only after successive years of below normal runoff and precipitation.
- 7:9. "Lateral drain" is defined in North Dakota Century Code section 61-21-01.
- 8:10. "Maintenance" means removal of silt and vegetation from a drain. Maintenance does not include deepening or widening a drain.
- 9:11. "Parties of record" means each person named or admitted as a party or properly seeking and entitled to be admitted as a party.
- 10:12. "Pond" means a well-defined land depression or basin that holds water in normal years throughout the summer. Ponds generally go dry only in years of below normal runoff and precipitation.
- 11:13. "Pond, slough, lake, sheetwater, or any series thereof" means ponds, sloughs, lakes, or sheetwater that are hydrologically linked.
- 12:14. "Sheetwater" is defined in North Dakota Century Code section 61-32-03.
- 13:15. "Slough" includes two types:
 - a. Seasonal slough: a depression that holds water in normal years from spring runoff until approximately mid-July. In years of normal runoff and precipitation, a seasonal slough is usually not tilled, but can be used for hayland or pasture. In low runoff, dry years, these areas generally are tilled for crop production, but commonly relood with frequent or heavy summer or fall rains.
 - b. Temporary slough: a shallow depression that holds water from spring runoff until approximately early June. In years of normal runoff and precipitation, a temporary slough is usually tilled for crop production. In years of high runoff or heavy spring rain, a temporary slough may not dry out until mid-July and generally would not be tilled, but may be used for hayland or pasture. A temporary slough frequently reloods during heavy summer or fall rains.
- 14:16. "Supplemental hearing" means a hearing held to review evidence not contained in the record of the ~~state engineer's~~department's public hearing.

~~45.17.~~ "Watercourse" is defined in North Dakota Century Code section 61-01-06.

~~46.18.~~ "Watershed" means the area that drains into a pond, slough, lake, or any series thereof.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-05. Exceptions to the need for a permit.

1. A drainage permit under section 89-02-01-03 is not required for maintenance of a drain.
2. The provisions of section 89-02-01-03 do not apply to any drain constructed under the direct and comprehensive supervision of the following federal or state agencies:
 - a. The state water commission;
 - b. [The department](#);
 - ~~c.~~ [The army corps of engineers](#);
 - ~~e.d.~~ The natural resources conservation service for projects constructed under the Watershed Protection and Flood Prevention Act [Pub. L. 83-566; 16 U.S.C. 1001];
 - ~~d.e.~~ The bureau of reclamation for projects that are part of the originally (1965) authorized Garrison diversion unit authorized;
 - ~~e.f.~~ The state department of transportation for federal aid projects; and
 - ~~f.g.~~ The public service commission for surface mining projects.

However, these agencies must notify the [state engineer department](#) of any proposed drainage projects under their direct supervision during the planning stages.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; April 1, 2004; January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-06. Determination of watershed area.

The determination of the watershed area must be made using the best available maps or surveys. LiDAR information or a survey conducted under the supervision of a registered land surveyor are preferred. Published seven and one-half minute topographic maps may also be utilized. This information may be supplemented by aerial photographs of the watershed or by an onsite investigation requested by the applicant or board or if the [state engineer department](#) determines it is necessary.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-07. Filing application.

Any person desiring a drainage permit must file an application with the [state engineer department](#) on a form provided by the [state engineer department](#). If requested by the [state engineer department](#) or the board, the applicant must provide an engineering analysis showing the downstream impacts of the

proposed drainage. The analysis may need to include a determination of the drain's and receiving watercourse's capacities and a volume and timing comparison of predrainage and postdrainage flows. If the application is incomplete or the information is insufficient to enable the ~~state engineer~~director or board to make an informed decision on the application, it will be returned to the applicant for correction.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-08. Referral of applications to appropriate district.

Upon receipt of a properly completed application, the ~~state engineer~~department must determine whether the application involves drainage of statewide or interdistrict significance under section 89-02-01-09. The ~~state engineer~~department must attach to the application any comments, recommendations, and engineering data that may assist the district in making a determination on the application. The application must then be referred to the district within which a majority of the watershed of the pond, slough, lake, sheetwater, or any series thereof is found.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; June 1, 1998; January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09. Criteria for determining whether drainage is of statewide or interdistrict significance.

In determining whether the proposed drainage is of statewide or interdistrict significance, the ~~state engineer~~department must consider:

1. Drainage affecting property owned by the state or its political subdivisions.
2. Drainage of sloughs, ponds, or lakes having recognized fish and wildlife values.
3. Drainage having a substantial effect on another district.
4. Drainage converting previously noncontributing areas (based on the National Oceanic and Atmospheric Administration Atlas 14 twenty-five year event - four percent chance) into permanently contributing areas.
5. For good cause, the ~~state engineer~~department may classify or refuse to classify any proposed drainage as having statewide or interdistrict significance.

History: Amended effective December 1, 1979; October 1, 1982; February 1, 1997; January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.1. Board procedure for processing applications to drain.

1. The board must use the following procedure to process a drainage permit application of statewide or interdistrict significance:
 - a. Upon receipt of an application to drain, the board must set the date, time, and place for a meeting at which it will receive testimony pertinent to the application. At the applicant's expense, the board must give notice by mail at least twenty days before the date set for the meeting to:

- (1) The applicant.
 - (2) All record title owners and holders of a contract for deed whose property the proposed drain would cross.
 - (3) All downstream riparian landowners who the board determines have the potential to be adversely impacted.
 - (4) Any board whose district would be substantially affected.
 - (5) The state game and fish department.
 - (6) The department of environmental quality.
 - (7) The department of transportation, county commissioners, or board of township supervisors if the proposed drain will affect or cross the right of way of any public highway, street, or road within their jurisdictions.
 - (8) The ~~state engineer~~department.
 - (9) The natural resources conservation service.
 - (10) Any person who has made a written request for notification of the project and has advanced the cost of providing that notification.
- b. Notice must be published in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. Final notice must be published between five and fifteen days before the date set for the meeting.
 - c. The notice must give the essential facts of the proposed drain, including:
 - (1) Name and address of applicant;
 - (2) Legal description of the area to be drained;
 - (3) Drain purpose;
 - (4) Watercourse into which the water will be drained;
 - (5) Legal description of the drain's confluence with the watercourse into which the water will be drained;
 - (6) The time, date, and place of the board's consideration of the meeting; and
 - (7) The location and date of availability of information regarding the project.
 - d. At least fourteen days before the meeting, the applicant must submit to the board all documentary information the applicant intends to present at the meeting. The board must immediately place the information in the board's office if the office is open for public access at least twenty hours each week. If the board's office is not open to the public at least twenty hours each week, the information must be immediately placed with the county auditor of the county in which the majority of the watershed of the drain will be built. The information must be available for public review. The board must notify the applicant of this requirement upon its receipt of an application to drain. If the information is placed in the auditor's office, the auditor must return the information to the board one working day before the meeting.
 - e. The board must allow submission of all relevant oral or written evidence.

- f. In evaluating applications, the board must consider the factors in section 89-02-01-09.2.
 - g. The board must stenographically or electronically record the meeting at which it receives information concerning the application. If the board approves the permit application, the record and all documentary information the board received must be transferred to the ~~state engineer~~department. The board must provide a meeting transcript at the request of the ~~state engineer~~department. The cost of providing a transcript must be borne by the applicant.
 - h. At the meeting's conclusion, the board must announce that:
 - (1) The board's permit denial constitutes final denial. Appeals must be taken to the district court within thirty days.
 - (2) A board-approved application will be forwarded to the ~~state engineer~~department.
 - (3) Those who wish to be notified of the board's decision must provide their names and addresses in writing to the board at the end of the meeting.
 - (4) The board must send notice and a copy of the board's determination and rationale to all parties of record, anyone who has requested in writing to be notified, and the ~~state engineer~~department.
 - i. If the board denies the application, it must return the application to the applicant, along with a copy of the board's determination and rationale. A copy of the board's determination and rationale must also be sent to all parties of record, anyone who has requested in writing to be notified, and the ~~state engineer~~department.
 - j. If the board approves the application, the approval must be noted on the application and a copy of the determination and rationale sent to the applicant. The board must send notice and a copy of the board's determination and rationale to all parties of record and anyone who has requested in writing to be notified. The application, a copy of the determination and rationale, and all information reviewed by the board in considering the application must be forwarded to the ~~state engineer~~department for review within twenty days of the determination. The board's decision approving the application must contain a determination of the location and surface acre size of ponds, sloughs, and lakes to be drained by the proposed drain.
 - k. The board's notice to an applicant must state that the application approval is not a permit to drain until the ~~state engineer~~director approves the application.
2. The board must use the procedure in this subsection to process a drainage permit application that is not of statewide or interdistrict significance:
- a. The board must review the permit application and any supporting documentation and determine whether public and private interests would be better served by a specific public meeting to consider the project.
 - b. If a specific public meeting is necessary, the board must process the permit application under procedures established by the board.
 - c. If a specific public meeting is unnecessary, the board must consider the project under the criteria in section 89-02-01-09.2 and must deny or grant the application and any modifications or conditions based upon those criteria. Written notice of the board's decision must be provided to all parties of record, anyone who has requested in writing to be notified, and the ~~state engineer~~department.

History: Effective February 1, 1997; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.3. Time for determination by board.

The board must make a determination on the application within one hundred twenty days of receipt. This time limit may be extended only with the written consent of the ~~state engineer~~[director](#). A request for a time extension must be in writing to the ~~state engineer~~[department](#) and must set forth the reason for the request. If no determination has been made and no extension has been requested, unless the ~~state engineer~~[director](#) determines that a unique or complex situation exists, the application is void.

For applications involving assessment drains, the one hundred twenty-day time period does not begin until the date the assessments are established by the board and no longer subject to appeal.

History: Effective February 1, 1997; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.4. Evaluation of applications by the ~~state engineer~~[director](#) of statewide or interdistrict significance - Information to be used.

In the ~~state engineer's~~[director's](#) evaluation of statewide or interdistrict significance applications, the ~~state engineer~~[director](#) must use all relevant documentary information submitted and oral testimony given for the board's consideration at its meeting. The ~~state engineer~~[director](#) may use any information in the files and records retained by the ~~state engineer's office~~[department](#) or engineering information developed or obtained through investigation of the project area by the ~~state engineer's~~[department's](#) staff.

The ~~state engineer~~[director](#) may also request information or comment from independent sources, but is not required to delay the decision for more than thirty days from the date of request while waiting for comment from these sources. All information used must be relevant and is part of the record.

History: Effective February 1, 1997; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~28-32-06~~, 61-32-03

89-02-01-09.5. Procedure, availability, and contents of notice of ~~state engineer's~~[director's](#) decision to grant or deny application of statewide or interdistrict significance.

1. The ~~state engineer~~[department](#) must provide a copy of the determination to the parties of record. ~~Other members of the public may view the record at the office of the state engineer, 900 east boulevard, Bismarck, during normal business hours.~~
2. ~~Upon written request, one copy of the determination may be provided to any person not provided a copy under subsection 1.~~

~~3.~~ The notice of decision must include:

- a. The name of the drain;
- b. The applicant's name;
- c. Whether the application was granted or denied;
- d. The date of the decision;
- e. The availability of the full text of the decision;

- f. That a hearing may be requested on the project within thirty days of the date of service of the ~~state engineer's~~director's decision; and
- g. The request for a hearing must be in writing, specifically state facts from which the person requesting the hearing is factually aggrieved by the ~~state engineer's~~director's decision, and what material facts or conclusions are believed to be erroneous and why they are believed to be erroneous.

History: Effective February 1, 1997; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-03

89-02-01-09.6. Request for ~~state engineer's~~department's hearing.

All requests for a formal hearing on a project must be made in writing to the ~~state engineer~~department within thirty days of the date of service of the ~~state engineer's~~director's decision. The request must specifically state facts from which it is evident the person requesting the hearing is factually aggrieved by the ~~state engineer's~~director's decision and must state which material facts or conclusions are believed to be erroneous and why they are believed to be erroneous.

History: Effective February 1, 1997; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-03

89-02-01-09.7. Notice of ~~state engineer's~~department's hearing.

If the ~~state engineer~~director determines that a request for a hearing on an application of statewide or interdistrict significance is valid and well-founded, the ~~state engineer~~department must set a date for a hearing and publish notice in the official newspaper of the county where a majority of the drainage basin is located. Publication must be once a week for two consecutive weeks. One of the publications must be published at least twenty days before the hearing. The person requesting the hearing must give notice by certified mail to the department of environmental quality, the state game and fish department, the state department of transportation, and all parties of record to the board's hearing at least twenty-one days before the hearing. If such notice is not provided, the hearing will not be held. The notice must give essential information about the proposed drainage application, including the date, time, and location of the hearing. All hearings will be held in Bismarck.

History: Effective February 1, 1997; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~28-32-05~~61-03-22

89-02-01-09.8. Evidence at the ~~state engineer's~~department's hearing.

Evidence at the ~~state engineer's~~department's hearing may be confined to the matters raised by any request of hearing described in section 89-02-01-09.6.

History: Effective February 1, 1997; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~28-32-06~~61-03-22, 61-32-03

89-02-01-09.9. Time for determination by the ~~state engineer~~director - Copies of decision.

Unless the ~~state engineer~~director determines the hearing raises complex or unique issues, the ~~state engineer~~director must render a decision within thirty days of the close of the hearing. A copy of the decision must be served on all parties of record either personally, or by certified mail, regular mail, or email. The ~~state engineer~~department will retain a certificate of service indicating upon whom a copy of the decision was served.

History: Effective February 1, 1997; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02, 28-32-13~~, 61-03-13

Law Implemented: NDCC ~~28-32-13~~[61-03-22](#)

89-02-01-09.10. Consideration of evidence not contained in the ~~state engineer's department's~~ record.

The record of the ~~state engineer's department's~~ hearing must be closed at the conclusion of the ~~state engineer's department's~~ formal hearing. It is in the ~~state engineer's director's~~ discretion to receive testimony and evidence not contained in the record. However, before considering any evidence not contained in the record, the ~~state engineer department~~ must provide notice to the parties of record where the evidence may be obtained for their examination and comment. Written comment or a request for a supplemental hearing must be submitted to the ~~state engineer department~~ within ten days after transmittal of the additional evidence. Any request for a supplemental hearing must provide sufficient information to allow the ~~state engineer director~~ to determine if a supplemental hearing is warranted. If a supplemental hearing is warranted, ten days' notice by personal service, certified mail, or email must be given to the parties of record to inform them of the date, time, place, and nature of the hearing. All supplemental hearings must be held in Bismarck.

History: Effective February 1, 1997; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~28-32-07~~[61-03-22](#)

89-02-01-09.11. Conditions to permits.

Unless otherwise specifically stated:

1. All permits must include the following conditions:
 - a. The project and the rights granted under the permit are subject to modification to protect the public health, safety, and welfare.
 - b. Construction must be completed within two years from the date of final approval or the permit is void. The two-year period does not begin until any appeal is complete.
2. All permits of statewide or interdistrict significance must include the following conditions:
 - a. All highly erodible drainage channels must be seeded to a sod-forming grass.
 - b. Vegetative cover must be adequately maintained for the life of the project or control structures must be installed.
 - c. Receipt of a permit does not relieve an applicant from liability for damages resulting from any activity conducted under the permit.

The ~~state engineer director~~ or board may attach other conditions to the permit if necessary.

History: Effective February 1, 1997; amended effective April 1, 2000; January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-01-09.12. Extending time to complete construction of drain.

If the two-year period expires before construction is complete, the permit recipient may make a written request to the board for a one-year extension. Only two extensions may be granted. All requests for extensions must be made at least sixty days before the expiration date and must specifically state why construction has not been completed. If the request is for an extension relating to a permit of

statewide or interdistrict significance, the extension must be submitted to and approved by both the ~~state engineer~~director and the board.

History: Effective February 1, 1997; amended effective April 1, 2004; January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-03-13~~, 61-32-03

89-02-01-28. Landowner assessment appeal to ~~state engineer~~department.

A landowner's appeal to the ~~state engineer~~department claiming that the landowner will receive no benefit from the construction of a new drain must be made within ten days after the assessment hearing. The appeal must be in writing and must specifically state the facts upon which the claim is based.

History: Effective April 1, 2000; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-22, 61-21-22

CHAPTER 89-02-04 DRAINAGE COMPLAINT APPEALS

Section

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89-02-04-02. Definitions.

Unless the context otherwise provides, the following definitions apply:

1. "Affected landowner" means a person with any property interest, including a lease in land where the drain complained of is located or land that is affected by the drain complained of.
2. "Aggrieved party" means any individual or entity who participated in the ~~state engineer's~~department's or board's consideration of an appeal and who is actually damaged by the board's or ~~state engineer's~~director's decision.
3. "Appeal" means an appeal from the decision of a board concerning a drain constructed.
4. "Board" means the board of the water resource district in which the complaint is brought.
5. "Complaint" is a document which alleges drainage has been conducted without proper authorization. It is filed on a form supplied to the water resource board by the ~~state engineer~~department.
6. "Party" includes the petitioner and any respondent, the board from which the decision is appealed, and any entity or individual that participated in the complaint process in front of the board. The designation as a party does not bestow standing to appeal a decision of the board to the ~~state engineer~~department or the decision of the ~~state engineer~~director to a court of law.
7. "Petitioner" means any aggrieved party who files a timely and proper appeal, or an affected landowner who files a timely and proper demand for hearing with the ~~state engineer~~department.

8. "Respondent" is a person who, within twenty days of notice of an appeal of a board's decision on a drainage complaint, files a notice with the ~~state engineer~~department of the person's intent to participate in the appeal. The person who filed the complaint, and the person against whom the complaint was filed, must be either a respondent or a petitioner. These persons and the board must be allowed to participate whether or not any notice of participation is filed with the ~~state engineer~~department. A person may not be a respondent to an appeal of a board's decision unless the person participated by providing information to the board for its consideration.

History: Effective October 1, 1988; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~[61-03-13](#)

Law Implemented: NDCC 61-32-08

89-02-04-03. Filing of complaint.

All complaints are filed with the water resource board in the county where the drainage is located. Complaints filed with the ~~state engineer~~department will be forwarded to the appropriate board, unless the complaint is filed because of the board's inaction on a complaint under section 89-02-04-04.

History: Effective October 1, 1988; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~[61-03-13](#)

Law Implemented: NDCC 61-32-08

89-02-04-04. Complaint to ~~state engineer~~department - ~~State engineer's~~Director's action when board fails to act.

If a board does not make a decision upon a drainage complaint within one hundred twenty days of its filing with the board, the person filing the complaint with the board may file a request for ~~state engineer~~director action with the ~~state engineer~~department. The request must include a copy of the complaint filed with the board and any documentation the landowner wishes the ~~state engineer~~department to consider. The ~~state engineer~~director must then determine whether to commence action against the board or conduct an investigation.

History: Effective October 1, 1988; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~[61-03-13](#)

Law Implemented: NDCC 61-32-08

89-02-04-05. Form of appeal.

If a board makes a decision on a drainage complaint, any appeal to the ~~state engineer~~department by an aggrieved party must be made within thirty days from the date notice of the board's decision was received in writing on the form prescribed by the ~~state engineer~~department, and must include:

1. The identity of all parties to the complaint.
2. Petitioner's interest in the water resource board's decision, including a statement of the impact the decision will have upon the petitioner.
3. The relief petitioner seeks.
4. A statement identifying the errors in the water resource board's decision that entitle the petitioner to the relief sought.
5. All facts presented to the water resource board that support the petitioner's position.
6. A legal description of the drainage area involved.
7. A map depicting the drainage area and identifying the drainage complained of.

8. A cashier's check to cover the cost of preparing a transcript of the proceedings before the board.

History: Effective October 1, 1988; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~[61-03-13](#)

Law Implemented: NDCC 61-32-08

89-02-04-06. ~~State engineer's~~[Department's](#) review of board's decision.

Upon receipt of ~~a written~~[an](#) appeal [on a form provided by the department](#) by an aggrieved party from a decision of a water resource district under North Dakota Century Code section 61-32-07, the ~~state—engineer~~[department](#) must review the board's decision. In the review, the ~~state—engineer~~[department](#) will consider only:

1. Ownership of the land on which the drain is located.
2. Topographic maps and aerial photographs of the area.
3. Any existing surveys of the area.
4. The documentation and testimony given to the board for its consideration.
5. Any pertinent rules of the appropriate board.
6. The board's decision.

History: Effective October 1, 1988; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~[61-03-13](#)

Law Implemented: NDCC 61-32-08

89-02-04-07. Sufficiency of information on appeal.

1. Once the ~~state—engineer's~~[department's](#) review under section 89-02-04-06 is complete, the ~~state—engineer~~[department](#) will determine whether the information reviewed is sufficient to make a sound decision.
2. If the information is not sufficient, the ~~state—engineer~~[department](#) will either conduct further investigations or return the record to the board for its further investigation.
3. If the information is sufficient, the ~~state—engineer~~[director](#) must determine whether a drain, lateral drain, or ditch has been opened or established contrary to North Dakota Century Code title 61 or any rules adopted by the ~~state—engineer~~[department](#) or the board. If so, the ~~state—engineer~~[director](#) will take one of the three actions set forth in North Dakota Century Code section 61-32-08. If the drain has not been opened contrary to North Dakota Century Code title 61 or a drainage rule, the complaint will be dismissed. In either case the ~~state—engineer~~[department](#) will notify all parties of the ~~state—engineer's~~[director's](#) decision ~~by certified mail or by regular mail provided the state engineer files an affidavit of service by mail indicating upon whom the decision was served~~. The notice of decision will include the names and addresses of all parties.

History: Effective October 1, 1988; amended effective August 1, 1994; January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~[61-03-13](#)

Law Implemented: NDCC ~~28-32-13,~~ 61-32-08

89-02-04-08. State engineer's Department's independent investigation.

After reviewing the board's decision and the items identified in section 89-02-04-06, the ~~state-engineer~~department may conduct an investigation if the information is insufficient. The investigation may include an onsite inspection and survey of the property involved and other activities deemed appropriate by the ~~state-engineer~~department. Any investigation the ~~state-engineer~~department undertakes in response to a complaint filed with the ~~state-engineer~~department because a board has not acted will be conducted under this rule.

History: Effective October 1, 1988; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~61-03-13

Law Implemented: NDCC 61-32-08

89-02-04-09. Demand for hearing by affected landowner.

Hearings demanded under North Dakota Century Code section 61-32-08 by an affected landowner must be made ~~by certified mail~~ within fifteen days of notice of the ~~state-engineer's~~director's decision. The affected landowner must also notify all parties ~~by certified mail~~ of the landowner's demand for hearing within fifteen days of the ~~state-engineer's~~director's decision. Hearings will be conducted as set forth in sections 89-02-04-11 through 89-02-04-23. The demand must state the issues to be addressed at the hearing.

History: Effective October 1, 1988; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~61-03-13

Law Implemented: NDCC 61-32-08

89-02-04-10. Request for hearing by others than affected landowners.

Any aggrieved party may request a hearing on the ~~state-engineer's~~director's decision. A request for a hearing must specifically state the reason for the request, and a copy of the request must be sent ~~by certified mail~~ to the ~~state-engineer~~department and to each party within fifteen days after notice of the ~~state-engineer's~~director's decision. If granted, the hearing must be conducted as set forth in sections 89-02-04-11 through 89-02-04-23.

History: Effective October 1, 1988; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-11. Appointment of hearing officer.

Upon receipt of an appeal or demand for a hearing, the ~~state-engineer~~director will appoint a hearing officer to:

1. Determine if the appeal is timely and proper.
2. Preside over the hearing.
3. Administer the prehearing activities.
- ~~3~~4. Prepare a recommended decision.

History: Effective October 1, 1988; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-12. Purpose of hearing.

If the hearing officer determines a hearing should be held, one will be conducted to:

1. Obtain further testimony from the parties.
2. Allow the ~~state engineer~~department to examine other witnesses and evidence.
3. Provide the parties with an opportunity to cross-examine witnesses called by the ~~state engineer~~department.
4. Allow the parties to call other witnesses to present evidence.

History: Effective October 1, 1988; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-13. Qualifications of witnesses at ~~state engineer's~~department's hearings.

Unless agreed to by both petitioner and respondent and allowed by the hearing officer, people who failed to participate in the water resource board's determination under North Dakota Century Code section 61-32-07 may not be called to present evidence or testimony for consideration. However, the ~~state engineer~~department may call witnesses on the ~~state engineer's~~department's own motion without the agreement of any party if the ~~state engineer~~department feels information known by the person will assist the hearing officer in making a recommended decision.

History: Effective October 1, 1988; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-14. Notice of hearing.

When the hearing officer determines a date for a hearing, the hearing officer will notify the water resource board, the petitioner, and the respondent of the time and date of the hearing. In the case of a demand by an affected landowner under section 89-02-04-09, the hearing officer must give the notice of the hearing date within fifteen days of the demand. The notice must be given ~~by certified mail~~ at least forty-five days before the date set for the hearing. All hearings will be held in Bismarck, North Dakota.

The notice must state that parties may present testimony at the hearing, petitioner and respondent may call witnesses at the hearing, and of the hearing officer's appointment as hearing officer. The notice must also state that each party must identify the position it is urging the ~~state engineer~~director to adopt. Those urging the ~~state engineer's~~director's decision should be affirmed must be designated respondents. Those urging reversal or modification of the ~~state engineer's~~director's decision must be designated petitioners.

History: Effective October 1, 1988; amended effective August 1, 1994; January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~28-32-05~~, 61-03-22, 61-32-08

89-02-04-16. Notice of witnesses at hearing - Time ~~Frame~~frame.

At least thirty days before the date set for the hearing, the petitioner must notify other parties, the board, the ~~state engineer~~department, and the hearing officer ~~by certified mail~~ of all witnesses the petitioner will call and the content of their testimony. At least thirty days before the date set for the hearing, the respondent must notify other parties, the board, the ~~state engineer~~department, and the hearing officer ~~by certified mail~~ of witnesses to be called by the respondent and the content of their testimony. Within twenty days of the date of the hearing, the petitioner must notify the parties, the board, the ~~state engineer~~department, and the hearing officer ~~by certified mail~~ of any rebuttal witnesses to be called and the content of their testimony. At least forty-five days before the date set for the hearing, the parties may agree to and submit an alternative scheduling order, as approved by the

hearing officer. The state-engineerdepartment must notify the parties, the board, and the hearing officer of any witnesses the state-engineerdepartment intends to call in the notice of hearing. However, if testimony or evidence not provided to the board and not considered in the state-engineer'sdirector's determination will be presented by others, the failure of the state-engineerdepartment to identify a witness should not preclude the state-engineerdepartment from providing other testimony and evidence of a technical nature.

History: Effective October 1, 1988; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-17. Subpoena of witnesses.

If any party desires the hearing officer to subpoena any witness for attendance at the hearing, the hearing officer must be notified of the intent to subpoena the witness at least seven days before the date of the hearing. The hearing officer may not subpoena a witness unless the request for a subpoena:

1. Is written.
2. States the subject matter of the testimony to be given.
3. States the time and date that the witness is to appear.
4. Is accompanied by a certified check for the fees allowed by law for one day for the witness. The fees allowed by law include mileage to and from the hearing, per diem, and in the case of the state-engineer'sdepartment's staff, the salary for that individual.

History: Effective October 1, 1988; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-05(13), 61-03-13

Law Implemented: NDCC ~~28-32-09~~, 61-03-05, 61-32-08

89-02-04-18. Prehearing conference.

A prehearing conference to clarify issues, resolve any conflicts, and stipulate to any matter will be held at least seven days before the date of the hearing. At the conference the parties must provide sufficient copies of exhibits to be presented to all parties, the board, the state-engineerdepartment, and the hearing officer. The hearing officer may allow the prehearing conference to be held by telephone if exhibits are provided to all parties, the board, the state-engineerdepartment, and the hearing officer at least three days before the prehearing conference.

History: Effective October 1, 1988; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-19. Order of presentation at hearing.

At the hearing the petitioner must present the petitioner's case first. The respondent then presents the respondent's case, followed by the board and the state-engineerdepartment. After all participants have presented their case, a participant may present other evidence or testimony to rebut that presented by another participant.

History: Effective October 1, 1988; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-20. Cross-examination.

Oral cross-examination of adverse witnesses will be allowed by the petitioner and the respondent. The petitioner and respondent must designate one individual to cross-examine witnesses that side did not call. In addition, the ~~state engineer~~department and the board may cross-examine any witnesses they did not call. However, if a party demonstrates to the hearing officer that the party's position is not adequately represented by any other party it may be allowed to cross-examine witnesses on the party's own.

History: Effective October 1, 1988; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-21. Record of hearing - Consideration by hearing officer.

After the hearing is over the record will be closed. The hearing officer will consider only material contained in the record and will not accept and consider any information after the hearing unless the evidence was not provided at the hearing because of circumstances beyond the control of the party presenting the evidence. Information submitted after the hearing may be considered by the ~~state engineer~~director in making the ~~state engineer's~~director's decision, but only under North Dakota Century Code section 28-32-25.

History: Effective October 1, 1988; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~28-32-07~~, 61-32-08

89-02-04-22. Recommendation of hearing officer.

After the hearing officer completes the consideration required under section 89-02-04-20, a written recommendation must be made to the ~~state engineer~~director.

History: Effective October 1, 1988; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-08

89-02-04-23. Decision of ~~state engineer~~director on record of hearing.

The ~~state engineer~~director will review the record, the hearing officer's recommendation, and any additional evidence received under North Dakota Century Code section 28-32-25, and make a final determination. If the conclusion is the drain, lateral drain, or ditch was constructed contrary to a board rule or title 61, the ~~state engineer~~director will take one of the actions prescribed by North Dakota Century Code section 61-32-08.

If the report concludes the drain, lateral drain, or ditch was lawfully constructed, the complaint will be dismissed.

History: Effective October 1, 1988; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~28-32-07~~, 61-32-08

CHAPTER 89-02-05.1

89-02-05.1-05. Application form.

An emergency drain permit application must be written and include:

1. Landowner's name and address.
2. Legal description of land where the emergency drain will be located.
3. A map showing the drain location.
4. An estimate of the surface acreage of the pond, slough, lake, sheetwater, or any series thereof and the volume of water to be drained by the emergency drain.
5. A list of all downstream adjacent landowners for a distance of one mile [1.6 kilometers] from the discharge point, along with the addresses and telephone numbers of these landowners.
6. Copies of any written permission received from downstream landowners.
7. A compilation of any written or oral permission and refusals from downstream landowners.
8. A description of the emergency.
9. Written permission allowing the ~~state engineer~~department and board to inspect the drain.

History: Effective June 1, 1998; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-06. Consideration of permit application.

An emergency drain permit application must be sent simultaneously to the board and the ~~state engineer~~department. The application will be reviewed for completeness by the board and the ~~state engineer~~department. The ~~state engineer~~department must make a preliminary determination as to the existence of an emergency. As soon as possible, a ~~conference call or onsite~~ meeting among the board, the ~~state engineer~~department, and other affected parties as determined by the ~~state engineer~~department must be held. The applicant or any other affected party may make a statement concerning the emergency drain permit application during the ~~conference call or onsite~~ meeting. Any ~~conference call or onsite~~ meeting must be electronically recorded. During the ~~call or onsite~~ meeting, but after all parties have been given an opportunity to present their views, the board must make a recommendation to the ~~state engineer~~department whether the permit should be granted.

History: Effective June 1, 1998; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-07. Decision on permit application - Conditions.

After completion of the ~~conference call or onsite~~ meeting, the ~~state engineer~~director must consider:

1. The written information received;
2. The matters discussed;
3. The board's recommendation; and
4. Whether the emergency permit should be granted.

If the permit is granted, the ~~state-engineer~~director may place any condition upon it, including a requirement for a bond and that receipt of an emergency drain permit does not relieve an applicant from liability for damages resulting from any activity conducted under the permit.

History: Effective June 1, 1998; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-08. Requirement for permanent permit application.

If the drain is to be permanent, the applicant must submit a drain permit application to the ~~state-engineer~~department under chapter 89-02-01. If the application is submitted at least thirty days before the emergency permit expires and the permanent drain has the same alignment as the emergency drain, the ~~state-engineer~~director may extend the term of the emergency permit until final action on the drain permit application has been taken. If the watershed of the permanent drain is the same as the emergency drain, but has a different alignment, the emergency drain permit must only be extended under section 89-02-05.1-09.1.

History: Effective June 1, 1998; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-09. Closure of drain.

If a permanent drain permit application is not submitted thirty days before the emergency permit expires, the applicant must immediately prepare to close the drain unless the applicant has applied for an extension under section 89-02-05.1-09.1. Preparations must include obtaining any permission or authorizations. Closure of the drain must be completed by the emergency permit expiration date. The applicant must keep the board and the ~~state-engineer~~department informed of the applicant's progress in closing the drain. The applicant must notify the board and the ~~state-engineer~~department in writing when the emergency drain has been completely closed.

History: Effective June 1, 1998; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

89-02-05.1-09.1. Extension of permit.

The applicant must submit a written request for an extension at least thirty days before the expiration of the emergency permit. If it is determined that an emergency still exists, the ~~state-engineer~~director may issue a one-time, six-month extension to the permit's expiration date. If an emergency continues to exist after the one-time extension, an applicant may reapply under chapter 89-02-05.1 for a new emergency drain permit.

History: Effective January 1, 2015; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-32-03

ARTICLE 89-03 WATER APPROPRIATIONS

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CHAPTER 89-03-01 WATER PERMITS

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89-03-01-04	Notice of Application
89-03-01-05	Publication of Notice of Water Permit Applications
89-03-01-05.1	Notice of Decision on Water Permit Application <u>[Repealed]</u>
89-03-01-06	Filing Proof of Publication and Mailing <u>[Repealed]</u>
89-03-01-06.1	Consideration of Evidence Not Contained in the State Engineer's Record <u>[Repealed]</u>
89-03-01-06.2	Notice of Continuance - Responsibility <u>[Repealed]</u>
89-03-01-06.3	Record - Official Notice
89-03-01-07	Necessity of Works and Construction of Works for a Conditional Water Permit
89-03-01-08	Point of Diversion
89-03-01-09	Appropriation Not Requiring Water Permit <u>[Repealed]</u>
89-03-01-10	Emergency or Temporary Authorization
89-03-01-10.1	Temporary Water Transfer for Irrigation
89-03-01-10.2	Temporary Permit Fees
89-03-01-11	Competing Applications
89-03-01-12	Extensions and Cancellations
89-03-01-13	Report of Water Usage <u>Use</u>
89-03-01-13.1	Fines - Water Use Reporting
89-03-01-14	Notice <u>[Repealed]</u>

89-03-01-01. ~~Submission of application for conditional~~ Conditional water permit application submission.

~~An application for a~~ conditional water permit application must be submitted to the ~~state engineer~~ department on the form provided by the ~~state engineer~~ department. A map containing the information prescribed by the ~~state engineer~~ department must accompany the application. Unless the ~~state engineer~~ department first approves another type of map, the map must be prepared from a survey, aerial photograph, or topographic map, and must be certified by a North Dakota-licensed surveyor ~~licensed in the state of North Dakota~~. The ~~state engineer~~ department may require information not requested in the application.

History: Amended effective April 1, 1989; February 1, 1994; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-03

89-03-01-01.1. Priority date.

The ~~date of receipt by the state engineer~~department must note the receipt date of a properly completed application ~~must be noted~~ on the application. Except for water applied to domestic, livestock, or fish, wildlife, and other recreational uses where a water permit is not required, this ~~date of filing~~ date establishes the ~~application's~~ original priority date ~~of an application~~, subject to ~~the application's~~ final acceptance ~~of the application~~ and issuance of a perfected water permit by the ~~state engineer~~department. For water applied to domestic, livestock, or fish, wildlife, and other recreational uses where a water permit is not required, the priority date is the date the quantity of water was first used.

History: Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-06.3

89-03-01-01.2. Land, property, or other interest requirement for conditional water permit.

An applicant for a conditional water permit applicant must have ~~ana legal~~ interest ~~or intent and ability to acquire an interest in the land~~ where the point of diversion and conveyance system will be located. The applicant must demonstrate to the ~~satisfaction of the state engineer~~department's ~~satisfaction~~ that the applicant has the capability to put the water to beneficial use. If the applicant is seeking a permit for irrigation, the applicant must also have ~~ana legal~~ interest ~~or intent and ability to acquire an interest~~ in the land to be irrigated. If the applicant is seeking a permit to impound water, the applicant must have ~~ana legal~~ interest ~~or intent and ability to acquire an interest~~ in the land or other property inundated by the impounded water. The ~~state engineer~~department may require ~~the applicant to submit evidence of such an interest. At any time the state engineer may require~~ additional verification of ~~land or a~~ property interest ~~or other interest~~ demonstrating the capability to put the water to beneficial use.

History: Effective April 1, 1989; amended effective August 1, 1994; April 1, 2004; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-02.2, 61-04-03, 61-04-06

89-03-01-01.3. When a water permit for stored water must be obtained.

A water permit may authorize ~~the water~~ storage ~~of water~~ for flood control or other reasons deemed necessary by the ~~state engineer~~department. However, authorization to store water for flood control or other reasons does not create a water right. If stored water will be put to beneficial use, a water permit must be obtained before beneficial use.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014; January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-01.1, 61-04-01.2, 61-04-02

89-03-01-01.4. Amount of water that may be held in storage under a water permit.

Unless otherwise authorized by the ~~state engineer~~department, any person authorized to store water, except for flood control, may only fill the reservoir to the amount authorized in the permit once each year. The reservoir will be filled during the first runoff following February first of each year. A consumptive use authorized in the water permit must be taken from the stored water. Unless otherwise authorized by the ~~state engineer~~department and with the exception of water stored for flood control, any inflows to the reservoir after the reservoir has been filled for the year must be allowed to pass through the reservoir ~~and downstream~~.

History: Effective November 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-01.2, 61-04-02, 61-04-06.2

89-03-01-01.5. Sale of excess water by an incorporated municipality or rural water system.

Any incorporated municipality or rural water system that appropriates water in excess of its current needs under North Dakota Century Code section 61-04-06.2 may sell the excess water provided:

1. The municipality or rural water system is supplying all the demands of its residents or members;
2. The agreement for sale of water is terminable by the incorporated municipality or rural water system upon six months' notice to the purchasing entity; and
3. The agreement for sale is approved by the ~~state engineer~~department.

The excess water may not be sold for any use other than that stated in the conditional or perfected water permit. This section does not apply to agreements for the sale of water entered into before November 1, 1989.

History: Effective November 1, 1989; amended effective June 1, 1998; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-02-27, 61-04-06.2

89-03-01-02. Correction of unsatisfactory application.

Repealed effective January 1, 2023.

~~— If an unsatisfactory application is refiled within sixty days from the date the request for corrections is mailed and if it meets the required corrections and is accepted, it will take the priority date of its original filing.~~

~~**History:** Amended effective April 1, 1989; August 1, 1994; July 1, 2014.~~

~~**General Authority:** NDCC 28-32-02, 61-03-13~~

~~**Law Implemented:** NDCC 61-04-04~~

89-03-01-03. Amendment of applicationApplication amendment.

1. An applicant may amend ~~an~~ a conditional water permit application. If the ~~state engineer~~department determines the amendment is likely to adversely affect another applicant whose application was submitted after the application sought to be amended and before the proposed amendment, the ~~state engineer~~department must change the priority date of the amended application to the date the amendment ~~request for the amendment~~ was received.
2. A request to amend an application may be by letter or by the submission of an amended application form for a conditional water permit.
3. If any notice of the ~~water permit~~ application has been mailed before the request to amend, the department may require the applicant ~~must~~to mail a corrected notice of the application to all persons who were sent the original notice and ~~must~~ submit an affidavit of service of corrected notice to the ~~state engineer~~department. If the notice of the application has been published, the ~~state engineer must publish~~department may require a corrected notice. ~~The state engineer may determine that corrected notice need not be mailed or published if the state engineer determines the amendment is insubstantial to be published.~~ The applicant must pay publication costs.

History: Amended effective April 1, 1989; April 1, 2000; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-04

89-03-01-03.1. Transfer of an application to another parcel.

Repealed effective January 1, 2023.

~~—A request by the applicant to transfer an application for a water permit to another parcel of land owned or leased by the applicant must be submitted to the state engineer on the form provided by the state engineer.~~

~~**History:** Effective April 1, 1989; amended effective July 1, 2014.~~

~~**General Authority:** NDCC 28-32-02, 61-03-13~~

~~**Law Implemented:** NDCC 61-04-03, 61-04-04, 61-04-15~~

89-03-01-03.2. ~~Assignment of an application to another person~~Application assignment.

A request to assign ana conditional water permit application ~~for a water permit~~ to another person must be submitted to the state engineer department in writing. When title of land for which there is a pending application is transferred, either the transferee or the applicant may apply for application assignment of the application. The assignment request ~~for assignment~~ must describe the transferee's interest in the application ~~for a water~~ permit. The state engineer department may request additional documentation of the transferee's interest.

History: Effective April 1, 1989; amended effective April 1, 2000; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-03~~, 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-04, 61-04-15

89-03-01-03.3. Evaporative losses.

When ana conditional water permit application involves water stored in a reservoir, a volume of water equal to the mean net evaporative loss over the surface area of the impoundment at the principal spillway elevation must be requested as an annual use that will ~~come out of~~ be taken from the stored water.

History: Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-03~~, 61-03-13

Law Implemented: NDCC 61-04-03, 61-04-06.2

89-03-01-04. Notice of application.

1. When a proper conditional water permit application is filed, the state engineer department will forward the appropriate number of completed notice of application forms to the applicant. The notice must include the following essential facts:
 - a. ~~Places and use of appropriation~~ All requested points of diversion;
 - b. ~~Amount of and purpose for which the water is to be used~~ Requested annual appropriation and withdrawal rate;
 - c. ~~Applicant's name and address~~ Requested source and purpose of use; and
 - d. Applicant's name; and
 - e. Newspaper in which the ~~notice of the~~ water permit application ~~will~~ notice must be published.

The notice must also state that the notice published in the newspaper will contain a date by which any person having an interest in the application may file written comments regarding the proposed appropriation with the ~~state engineer~~department and that anyone who files written comments will be mailed a copy of the ~~state engineer's~~department's recommended decision on the application.

2. Upon receipt of the completed notice of application forms, the applicant must send a notice of application form as provided in North Dakota Century Code section 61-04-05. The determination of title owners at the time of the application must be based on title records on file with the appropriate county recorder. For land subject to a contract for deed, the contract's grantor and grantee must both be notified.
3. After notice of application forms have been mailed to those required by North Dakota Century Code section 61-04-05, the applicant must properly complete an affidavit of notice and return it to the ~~state engineer~~department. The affidavit of notice must state how the applicant determined the record title owners and must list the names and addresses of those who were sent notices.

~~4. If a properly completed affidavit of notice is not submitted within one hundred twenty days, the application must be considered to have been withdrawn by the applicant.~~

History: Amended effective April 1, 1989; November 1, 1989; February 1, 1994; April 1, 2000; April 1, 2004; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-05

89-03-01-05. Publication of notice of water permit applications.

In addition to the requirements in North Dakota Century Code section 61-04-05, a copy of the notice of the conditional water permit application to be published must be sent to the applicant.

History: Amended effective April 1, 1989; November 1, 1989; February 1, 1994; August 1, 1994; April 1, 2000; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-05

89-03-01-06.3. Record - Official notice.

Unless specifically excluded by the ~~state engineer~~department or the hearing officer, the record in each water permit application proceeding includes, when available, the following reports or records, or portions thereof, relevant to the proposed appropriation:

1. United States department of agriculture natural resources conservation service reports, including the North Dakota hydrology manual, North Dakota irrigation guide, and county soil survey reports.
2. United States geological survey and ~~state water commission~~department streamflow records.
3. United States geological survey and ~~state water commission~~department water quality data.
4. National oceanic and atmospheric administration climatological data.
5. United States geological survey topographic maps.
6. ~~State engineer~~Department water permit files.
7. ~~State engineer~~Department annual water use reports.

8. ~~State water commission~~Department and United States geological survey ground water level data.
9. North Dakota board of water well contractors well completion reports.
10. ~~State engineer~~Department test hole records.
11. ~~State water commission~~Department water resource investigations reports and ground water study reports.
12. ~~State water commission~~Department and United States geological survey county ground water study reports.
13. Information in ~~state engineer~~department and state water commission files, records, and other published reports.

History: Effective February 1, 1994; amended effective April 1, 2000; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-05.1

89-03-01-07. Necessity of works and construction of works for a conditional water permit.

A conditional water permit application may only be considered if works are associated with the proposed appropriation. For any water appropriation that involves the construction of works that require a construction permit from the ~~state engineer~~department, the water permit may be issued before receipt of the construction permit. However, the water permit is not valid until the construction permit is issued.

History: Effective April 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-02

89-03-01-08. Point of diversion.

The ~~state engineer~~department may not issue a water permit that allows for the appropriation of water from more than one water source. An appropriation from the main channel of a river and from a tributary of the river is an example of an appropriation from more than one water source. The ~~state engineer~~department may issue a water permit that allows for points of diversion from different locations from the same water source, provided the ~~state engineer~~department finds good cause for doing so.

History: Effective April 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-06.2

89-03-01-09. Appropriation not requiring water permit.

Repealed effective January 1, 2023.

~~—An application for appropriation of water that does not require a water permit may be obtained from the state engineer to establish a priority date.~~

~~**History:** Effective April 1, 1989; amended effective July 1, 2014.~~

~~**General Authority:** NDCC 28-32-02, 61-03-13~~

~~**Law Implemented:** NDCC 61-04-02~~

89-03-01-10. Emergency or temporary authorization.

~~Application~~An application for a temporary appropriation water permit must be made on the form provided by the ~~state engineer~~department. In that request, the applicant must indicate the purpose for

which water will be used, ~~water~~ quantity ~~of water~~ needed, proposed point of diversion, type of use, ~~place of use, withdrawal~~ rate ~~of withdrawal~~, ~~water~~ source ~~of water~~, ~~dates of~~ proposed use ~~dates~~, and applicant's address. The ~~state engineer department~~ will evaluate the request and, if it is granted, the ~~state engineer department~~ will list on the temporary ~~authorization~~ ~~water permit the~~ conditions that govern the appropriation.

An applicant for emergency ~~water~~ use ~~of water~~, if the situation warrants, may call the ~~office of the state engineer department~~ requesting immediate ~~water~~ use ~~of water~~. Following an oral request and oral approval by the ~~state engineer department~~ for authorization, a temporary application form must be submitted.

The applicant for ~~a~~ temporary ~~or emergency appropriations~~ ~~water permit~~ is responsible for all damages that may be caused to other appropriators or any other individual because of the emergency or temporary ~~water~~ use ~~of water~~.

History: Effective April 1, 1989; amended effective July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-02.1

89-03-01-10.1. Temporary water transfer for irrigation.

To accommodate annual crop rotation requirements, the holder of a water permit for irrigation may make a request to the ~~state engineer department~~ for the temporary transfer of the volume of water appropriated from an approved point of diversion to another tract of land. The transfer must be made for an entire irrigation season and conform to the terms and conditions of the water permit, except that no water right will accrue to the land under temporary irrigation. Irrigation may not take place on the tract of land from which the transfer is made during that irrigation season. The request for a transfer must be made by May fifteenth of the year the transfer is to be in effect.

History: Effective August 1, 1994; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-02.1

89-03-01-10.2. Temporary permit fees.

The following filing fee schedule will be used for temporary water permit applications. The fee must be included with the application. The ~~state engineer department~~ may waive the fees for certain emergency uses of a temporary water permit, including firefighting.

Volume of Water Requested:

Less than one acre-foot	\$75
One to ten acre-feet	\$125
More than ten acre-feet	\$200

Filing fees are not required for requests made under section 89-03-01-10.1.

History: Effective July 1, 2014; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-02.1, 61-04-06.2

89-03-01-11. Competing applications.

~~Applications for conditional water permits~~ [Conditional water permit applications](#) from the same source for different uses will be considered competing applications if received by the ~~state engineer department~~ within ninety days of each other.

History: Effective April 1, 1989; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-06.1

89-03-01-12. Extensions and cancellation.

Where the time has expired to put any portion of the water ~~of~~appropriated under a conditional water permit to the beneficial use named in the permit, the ~~state-engineer~~department will notify the ~~permittee~~permitholder. The ~~state-engineer~~department will provide the ~~permittee~~permitholder with a form to request an extension for applying the water to the beneficial use and to explain why an extension should be granted. Except in overriding circumstances, no extension will be granted when other conditional water permit applications are pending from a limited supply ~~source-of supply~~.

History: Effective April 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-14

89-03-01-13. Report of water usage ~~use~~.

The form for reporting water usage ~~use~~ under North Dakota Century Code section 61-04-27 must include the permit number, ~~amount-of~~ water usage amount, pumping rate, if applicable, and any other information the ~~state-engineer~~department may require. One form must be filed for each water permit held.

History: Effective April 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-27

89-03-01-13.1. Fines - Water use reporting.

~~1. A holder of a municipal, rural water, irrigation, or industrial water permit~~A permitholder who fails to timely submit a complete and accurate water use report under North Dakota Century Code section 61-04-27 will be assessed a fine of two hundred fifty dollars for each water permit.

~~2. If the permitholder submits both the complete and the accurate water use report and payment of the fine before June first, the fine per water permit will be reduced to fifty dollars.~~

History: Effective July 1, 2014; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-23, 61-04-27

89-03-01-14. Notice.

Repealed effective January 1, 2023.

~~When a statute or rule requires the state engineer or water commission to serve an order personally or by certified mail, the order may be served by regular mail with an affidavit of service indicating upon whom the order was served.~~

History: Effective February 1, 1997; amended effective July 1, 2014.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-03-13~~

CHAPTER 89-03-02
~~MODIFICATION OF A WATER PERMIT~~ MODIFICATION

Section

89-03-02-01	Submission of an Application for a Change into <u>add a</u> Point of Diversion or <u>for a</u> Change in Purpose of Use
89-03-02-02	Return of Unsatisfactory Application
89-03-02-03	Amendment of Application <u>Amendment</u>
89-03-02-04	Fee [Repealed]
89-03-02-05	Notice of Application
89-03-02-06	Publication of Notice of an Application for a Change in the Purpose of Use or <u>to Add a</u> Point of Diversion
89-03-02-07	Filing Proof of Publication and Mailing [Repealed]
89-03-02-08	Assignment of a Water Permit to Another Person
89-03-02-09	Transfer of a Water Permit to Another Parcel <u>[Repealed]</u>
89-03-02-10	Change in Location of Use
89-03-02-11	Increase in Pumping Rate
89-03-02-12	Water Permit for Irrigation - Limitation

89-03-02-01. Submission of an application ~~for a change into~~ add a point of diversion or for a change in purpose of use.

An application ~~for a change into~~ add a point of diversion or for a change in purpose of use must be submitted to the ~~state engineer~~department on the form provided by the ~~state engineer~~department. The ~~state engineer~~department may require information not requested in the application. A change in purpose of use may only be granted for a use that has a higher priority than the use from which a change is sought, as specified in North Dakota Century Code section 61-04-06.1.

History: Amended effective April 1, 1989; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-04, 61-04-06.1, ~~61-04-15.1~~61-04-15.2, 61-04-15.4

89-03-02-02. Return of unsatisfactory application.

If the change in purpose of use or ~~change into~~ add a point of diversion application is not submitted on the proper form or if the form is improperly completed, it will be returned within thirty days, along with a statement of the required corrections.

History: Amended effective April 1, 1989; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-04, ~~61-04-15.1~~61-04-15.2, 61-04-15.4

89-03-02-03. ~~Amendment of application~~ Application amendment.

An applicant for a change in purpose of use or ~~a change in the~~ to add a point of diversion, before being instructed to give notice as ~~provided in~~ required by section 89-03-01-04, may amend an application. An amendment request may be made by letter or by submission of an amended application.

If any notice of an application for a change in the purpose of use or ~~a change in the~~ to add a point of diversion has been mailed before the request to amend, the department may require the applicant must mail a corrected notice of the application to all persons who were sent the original notice and must submit an affidavit of service of corrected notice to the ~~state engineer~~department. If the notice of application has been published, the ~~state engineer must publish~~department may require a corrected notice. ~~The state engineer may determine that corrected notices need not be mailed or published if the state engineer determines the amendment is insubstantial to be published.~~ The applicant must pay publication costs.

History: Amended effective April 1, 1989; April 1, 2000; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-04, ~~61-04-15.1~~ [61-04-15.2](#), [61-04-15.4](#)

89-03-02-05. Notice of application.

Notification of an application for change in purpose of use or ~~change into~~ [add a](#) point of diversion must be handled in accordance with section 89-03-01-04.

History: Amended effective April 1, 1989; August 1, 1994; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-05, ~~61-04-15.1~~ [61-04-15.1](#), [61-04-15.4](#)

89-03-02-06. Publication of notice of an application for a change in the purpose of use or [to add a](#) point of diversion.

Notice of an application or an amendment to an application for a change in the purpose of use or ~~a change in the~~ [to add a](#) point of diversion must be published in accordance with section 89-03-01-05.

History: Amended effective April 1, 1989; April 1, 2000; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-05, ~~61-04-15.1~~ [61-04-15.2](#), [61-04-15.4](#)

89-03-02-08. Assignment of a water permit to another person.

A request to assign a water permit to another person must be submitted to the ~~state engineer~~ [department](#) in writing. Either the transferee or the ~~holder of the permit~~ [permitholder](#) may ~~apply for request~~ assignment of the water permit. The application must describe the transferee's interest in the water permit. The ~~state engineer~~ [department](#) may request additional documentation of the transferee's interest.

History: Effective April 1, 1989; amended effective February 1, 1997; April 1, 2000; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-15

89-03-02-09. Transfer of a water permit to another parcel.

~~[Repealed effective January 1, 2023.](#)~~

~~—A request to transfer a water permit to another parcel of land owned or leased by the permittee must be submitted to the state engineer on the form provided by the state engineer.~~

~~**History:** Effective April 1, 1989; amended effective July 1, 2014.~~

~~**General Authority:** NDCC ~~28-32-02~~, 61-03-13~~

~~**Law Implemented:** NDCC ~~61-04-15~~~~

89-03-02-10. Change in location of use.

No change in location of use of a conditional or perfected water permit will be granted if other appropriators that rely upon the return flows from the ~~permittee's~~ [permitholder's](#) beneficial use of water would be adversely affected. ~~"Return flow" is residual water that is returned to its source or some other source after beneficial use by a permittee.~~

History: Effective April 1, 1989; amended effective July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-01-01(3), 61-04-15

89-03-02-11. Increase in pumping rate.

A request to increase a ~~permittee's~~permitholder's pumping rate must be made in writing to the ~~state engineer~~department. The ~~state engineer~~department, before making a decision on the request, will consider what effect the increase has on other appropriators from the water source.

History: Effective April 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-06.2

89-03-02-12. Water permit for irrigation - Limitation.

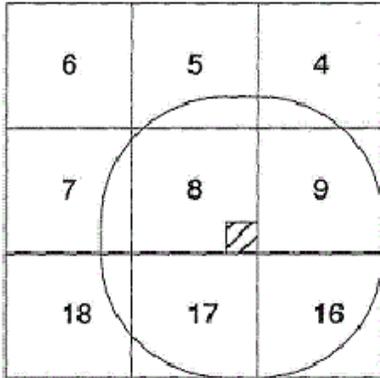
The ~~state engineer~~department may increase the number of acres that may be irrigated on the tracts of land specified in a water permit to allow for more efficient operation of an irrigation system. A request for an increase in the number of acres must be evaluated in accordance with ~~subsections 1~~subdivisions a through ~~3c~~ of subsection 1 of North Dakota Century Code section 61-04-06. Any increase in acreage cannot exceed ten acres or ten percent of the originally approved acreage, whichever is greater.

History: Effective April 1, 1989; amended effective August 1, 1994; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

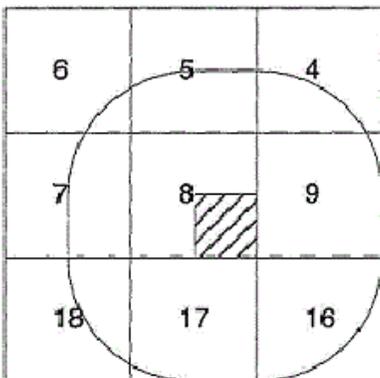
Law Implemented: NDCC 61-04-06.2

APPENDIX A
ARTICLE 89-03



Proposed point of diversion

SE1/4 SE1/4 of Section 8, Township 150 North, Range 83 West. All landowners within a one-mile (1.6 kilometer) radius of the exterior boundaries of the 40-acre (16-hectare) tract must be notified.



Proposed point of diversion

SE1/4 of Section 8, Township 150 North, Range 83 West. All landowners within a one-mile (1.6 kilometer) radius of the exterior boundaries of the 160-acre (65-hectare) tract must be notified.

CHAPTER 89-03-03

89-03-03-01. Definitions.

The following definitions apply to this ~~title~~article:

1. ~~"Domestic rural use" means two or more family units or households obtaining water from the same system for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for each family unit or household for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use.~~"Department" is defined in North Dakota Century Code section 61-03-01.2.
2. "Measuring device" ~~is~~means a flow meter or water meter measuring the quantity and rate of water flowing through a pipe and complying with the flow meter specifications issued by the ~~state engineer~~department.
3. "One-mile radius" means the distance of one mile [1.61 kilometers] from a specific point of diversion as listed in a water permit application. Where the point of diversion is listed as a parcel, the one mile [1.61 kilometers] is measured from the exterior boundary of the area contained in the legal description.
4. "Point of diversion" is ~~the geographical location from which water is appropriated for beneficial use~~ defined in North Dakota Century Code section 61-04-01.1. A point of diversion may be described as a tract of land as described in the public land survey system (PLSS).
5. "Reasonably be necessary for the future water requirements of the municipality or the rural water system" means the amount of water estimated to be required thirty years in the future. The total water ~~quantity of water~~ a municipality or rural water system may hold under all permits for municipal use may not exceed the quantity the municipality or rural water system can reasonably expect to use thirty years in the future.
6. "Return flow" is residual water that is returned to its source or some other source after beneficial use by a permitholder.
- ~~7.~~ 7. "Stored water" means water temporarily or permanently retained by or in a dam, dike, excavation, or other constructed works.
- ~~7-8.~~ "Works" include canals, ditches, pipelines, and other conveyance systems, irrigation facilities, wells, pumps, dams, dikes, reservoirs, and other devices used for the appropriation, storage, and beneficial use of water.

History: Effective April 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-02, 61-04-05

CHAPTER 89-05-01
CONSTRUCTION OF DIKES WITHIN THE FLOODPLAINS OF THE RED RIVER OF THE NORTH AND THE BOIS DE SIOUX RIVERS

Section

89-05-01-01	Intent
89-05-01-02	Application of Chapter
89-05-01-03	Definitions
89-05-01-04	Severability
89-05-01-05	Design Criteria
89-05-01-06	Dike Design Data
89-05-01-07	Dikes Across Natural Waterways and Legal Drains
89-05-01-08	Farmstead Diking
89-05-01-09	Application for Permit
89-05-01-10	Joint Permit Applications
89-05-01-11	Referral to Water Management <u>Resource</u> District
89-05-01-12	Issuance of Permits
89-05-01-13	Joint Administration
89-05-01-14	Permit Revocation
89-05-01-15	Dike Reconstruction or Rebuilding
89-05-01-16	Exception to the Criteria
89-05-01-17	Application to Existing Dikes

89-05-01-01. Intent.

The purpose of this chapter is to provide for the orderly and consistent review of permit applications to construct, relocate, rebuild, or alter agricultural dikes located within the floodplains of the Red River of the North and Bois de Sioux Rivers. The authority to establish this chapter is granted to the ~~North Dakota state engineer~~department by North Dakota Century Code section 61-16.1-38. Similar rules will be in effect in the state of Minnesota. The two states recognize that establishment of these rules governing the issuance, review, and denial of permits to construct, relocate, rebuild, or alter agricultural dikes along the Red and Bois de Sioux Rivers is but the first step in the exercise of joint control over those activities which could contribute to an increased flood potential of these rivers. The two states further recognize the need to exercise this joint control in a cooperative and coordinated manner because water management decisions which appear logical in a local or statewide context may have negative interstate and international impacts. These rules will also provide a basis for the review of existing unauthorized agricultural dikes along the Red River and Bois de Sioux River.

History: Effective August 1, 1980; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~61-02-11, 61-03-13

Law Implemented: NDCC 61-02-24, 61-16.1-38

89-05-01-03. Definitions.

Unless the context otherwise requires, the following definitions apply:

1. "Board of commissioners" means the board of commissioners of a water management district.
2. "Boundary rivers" means the Red River of the North and the Bois de Sioux River as they form a natural boundary between the states of Minnesota and North Dakota.
3. "Department" is defined in North Dakota Century Code section 61-03-01.2.
4. "Dike" means an embankment constructed of earth or other suitable materials to protect agricultural lands from floods which result from overflow of watercourses or from diffused surface waters.

~~4-5.~~ "Director" is defined in North Dakota Century Code section 61-03-01.2.

~~6.~~ "District" means water ~~management~~resource district.

~~5-7.~~ "Farmstead" means a farm dwelling or associated farm buildings.

~~6-8.~~ "Flood frequency" means the average frequency, statistically determined, for which it is expected that a specific flood stage or discharge may be equaled or exceeded. This frequency is usually expressed as having a probability of occurring, on the average, once within a specified number of years.

~~7-9.~~ "Floodwaters" means those waters which temporarily inundate normally dry areas adjoining a watercourse. This inundation results from an overflow of the watercourse caused by excessive amounts of rainfall or snowmelt which exceed its capacity.

~~8-10.~~ "Person" means a human being, firm, partnership, association, corporation, or any other type of private legal relationship, and any governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, and any political subdivision of the state.

~~9-11.~~ "Ring dike" means an embankment constructed of earth or other suitable materials for the purpose of enclosing a farmstead.

~~10.~~ ~~"State engineer" means the state engineer, appointed pursuant to North Dakota Century Code section 61-03-01, or the state engineer's designee.~~

~~11-12.~~ "Watershed" means the area draining into, or contributing water to, the Red River of the North or the Bois de Sioux River.

~~12.~~ ~~"Waterway" means a channel in which a flow of water occurs either continuously or intermittently in a definite direction. The term applies to either natural or artificially constructed channels.~~

History: Effective August 1, 1980; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02,~~ 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-06. Dike design data.

The ~~North Dakota state water commission~~department shall provide the discharges and corresponding elevations of various frequency floods (and other available flood data), in relation to known historic floods, for use in dike design.

History: Effective August 1, 1980; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02,~~ 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-07. Dikes across natural waterways and legal drains.

Dikes shall not be constructed across tributaries to the Red River and the Bois de Sioux River without proper authorization from the appropriate agency. Dike setbacks along tributary waterways to the Red River and the Bois de Sioux River, within the area defined in section 89-05-01-02, shall meet the criteria as stated in section 89-05-01-04. Dikes constructed across special assessment drains or public ditch systems constructed pursuant to North Dakota Century Code title 61 shall require the approval of the appropriate ~~drain board,~~ water managementresource district, ~~or other local authority.~~

History: Effective August 1, 1980; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02,~~ 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-08. Farmstead diking.

Within an existing dike system, ring dikes around individual farmsteads shall not require permits if they do not include tiebacks to existing roadways or dikes. Ring dikes with tiebacks shall be considered part of the overall dike system and will be required to secure diking permits. This waiver of a permit requirement for ring dikes from the ~~state-engineer~~director does not relieve the necessity of appropriate authorization for ring dikes from the local water ~~management~~resource district in accordance with the North Dakota Century Code.

History: Effective August 1, 1980; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02,~~ 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-09. Application for permit.

All applications submitted by the owner to construct, to relocate, rebuild, or alter dikes shall be made on forms provided by the ~~North-Dakota-state-engineer~~department and shall be accompanied by two complete sets of plans or specifications. Such plans and specifications shall include the following:

1. A general location map with a minimum scale of one inch to eight hundred feet [2.54 centimeters to 243.84 meters] showing the following:
 - a. Location of the dike with respect to the watercourse.
 - b. Location of field inlets to provide for internal drainage.
 - c. Location of legal drains and natural channels tributary to the main river channel.
2. Detailed cross sections of the dike showing elevations, in relation to mean sea level, and side slopes.
3. The ~~state-engineer~~department may require any other additional information that the ~~state-engineer~~department deems necessary.

After review of the information required above and other available data, the ~~state-engineer~~department shall determine the location and number of required cross sections of the river channel and overland areas. These locations shall be provided to the applicant who shall then provide the required cross-section data. The applicant shall undertake and agree to pay the expenses incurred in securing these cross sections.

History: Effective August 1, 1980; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02,~~ 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-10. Joint permit applications.

Joint permit applications involving two or more landowners or a permit application on behalf of two or more landowners will be accepted by the ~~state-engineer~~department. These permit applications, taken together, must meet the requirements of this chapter.

History: Effective August 1, 1980; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02,~~ 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-11. Referral to water ~~management~~resource district.

Within forty-five days after the receipt of a permit application, the ~~state-engineer~~department shall make recommendations and suggestions concerning the propriety and efficiency of the proposal to the water ~~management~~resource district within which the contemplated project is located. The water ~~management~~resource district shall, in accordance with this chapter, review the application and impose any conditions for the orderly management of water resources it deems necessary. The permit application shall then be returned to the ~~state-engineer~~director for final approval. Unless an exception is granted pursuant to section 89-05-01-15, the ~~state—engineer~~director and the water ~~management~~resource district shall not allow the construction of a dike not in conformance with this chapter nor which is unsafe, improper, or dangerous, and may order such changes as necessary for safety or the protection of property.

History: Effective August 1, 1980; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-12. Issuance of permits.

Dike permits will be issued only upon concurrent approval of the ~~state-engineer~~director and the appropriate water ~~management~~resource district. Approval of the permit will in no way relieve the owner from damages which may be caused or created by construction of the dikes.

History: Effective August 1, 1980; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-13. Joint administration.

A copy of each application and accompanying information for a permit shall be forwarded by the ~~state-engineer~~department to the department of natural resources of Minnesota for comment and recommendation before final approval is granted. If comments are not received within thirty days, the ~~state-engineer~~department shall process the permit without such comments.

History: Effective August 1, 1980; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~~~61-02-11~~, 61-03-13

Law Implemented: NDCC 61-02-24, 61-16.1-38

89-05-01-14. Permit revocation.

The applicant shall provide certification by a registered land surveyor, engineer, or other qualified person or agency that the finished dike elevations are not higher than those approved by the ~~state-engineer~~director. The permit will be revoked for failure to provide this certification. The permit may be revoked for failure to construct the dike in accordance with the plans and specifications submitted. Structural alteration of the dike without permission of the ~~state-engineer~~director and the appropriate water ~~management~~resource district will also result in revocation of the permit.

History: Effective August 1, 1980; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-15. Dike reconstruction or rebuilding.

Reconstruction or rebuilding of any authorized dikes shall require notification ~~ef~~to the ~~state-engineer~~department and recertification upon completion in accordance with section 89-05-01-14.

History: Effective August 1, 1980; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-05-01-16. Exception to the criteria.

Under special circumstances, exceptions to the dike criteria may be authorized on an individual basis but they must have the concurrent approval of the ~~North Dakota state engineer~~director, local water ~~management~~resource board in North Dakota, Minnesota department of natural resources, and local watershed district in Minnesota. Factors that will be considered, among other things, shall be increase in flood stage, increase of stage at existing city dikes, increase in stream velocity, and environmental effects. In addition, the ~~state engineer~~director will authorize the utilization of farmsteads, property lines, and existing roads for dike construction, consistent with this chapter.

History: Effective August 1, 1980; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

CHAPTER 89-06-01

89-06-01-01. Definitions.

The following definitions apply to this article:

1. "Applicant" means the party submitting a proposal.
2. "Commission" ~~means the North Dakota state water commission~~ is defined in North Dakota Century Code section 61-02-02.
3. "Department" is defined in North Dakota Century Code section 61-03-01.2.
4. "Proposal" means an application for a water-related project or a water-related project submitted to the ~~commission~~ department for financial assistance from the resources trust fund.

History: Effective June 1, 1987; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02, 61-02-14~~ 61-02-11, 61-02-14

Law Implemented: NDCC 57-51.1-07.1, 61-02-14

CHAPTER 89-08-01

89-08-01-01. Definitions.

The following definitions apply in this article:

1. "Appurtenant works" means all works incident or attached to a dam, dike, or other device, including:
 - a. A spillway, either in the dam or separate from it;
 - b. The reservoir and its rim;
 - c. A low-level outlet; and
 - d. A water conduit, such as a tunnel, pipeline, or penstock, either through the dam, dike, or other device or their abutments.
2. "Construction" or "construct" means any activity for which a permit is required by North Dakota Century Code section 61-16.1-38, including construction, alteration, enlargement, or modification of a dam, dike, or other device.
3. "Dam" means any barrier, including any appurtenant works, constructed across a watercourse or an area that drains naturally to impound or attenuate the flow of water. All structures necessary to impound a single body of water are considered a single dam.
4. "Department" is defined in North Dakota Century Code section 61-03-01.2.
5. "Dike" means any artificial barrier, including any appurtenant works, constructed along a ~~watercourse~~ waterway or an area that drains naturally to divert the flow of water to protect real or personal property.
- 5-6. "Director" is defined in North Dakota Century Code section 61-03-01.2.
7. "Diversion" means any open channel, culvert, or ditch constructed to reroute a watercourse as defined by North Dakota Century Code section 61-01-06.
- 6-8. "Embankment" means a structure created by an artificial deposit of material upon the natural surface of the land that is designed to act as a water control device, support roads or railways, or for other similar purposes.
- 7-9. "Engineer" means a person who has been duly registered and licensed as an engineer by the North Dakota state board of registration for professional engineers and land surveyors.
- 8-10. "Height" means the maximum vertical distance from the stream channel bottom or lowest elevation of a naturally draining area to the top of dam.
- 9-11. "High-hazard dam" means a dam ~~located upstream of developed or urban areas where failure may cause serious damage to homes, industrial and commercial buildings, and major public utilities. There is potential for the loss of more than a few lives if the dam fails~~ with high-hazard potential where failure or misoperation will probably cause loss of human life.
- 10-12. "Holding pond, lagoon, or dugout" means any artificial, hydraulically disconnected structure, including any appurtenant works, constructed to store water.
- 11-13. "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of

work with approved plans and specifications, or the safety and operating performance of a dam, dike, or other device.

~~42.14.~~ "Low-hazard dam" means a dam ~~located in a rural or agricultural area where there is little possibility of future development. Failure of low-hazard dams may result in damage to agricultural land, township and county roads, and farm buildings other than residences. No loss of life is expected if the dam fails~~with low-hazard potential where failure or misoperation results in no probable loss of human life and low economic losses.

~~43.15.~~ "Medium-hazard dam" means a dam ~~located in a predominately rural or agricultural area where failure may damage isolated homes, main highways, or railroads, or cause interruption of minor public utilities. There is potential for the loss of a few lives if the dam fails~~with medium-hazard potential where failure or misoperation results in no probable loss of human life but can cause economic loss, disruption of lifeline facilities, or can impact other concerns.

~~44.16.~~ "Other device" means a water control structure, other than a dam or dike, including diversions and holding ponds, lagoons, or dugouts.

~~45.17.~~ "Owner" means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam, dike, or other device. For the purpose of a construction permit application, "owner" means the person who owns the property or interest in property where the dam, dike, or other device will be built.

~~46.18.~~ "Significant-hazard dam" means the same as "medium-hazard dam" and may be used interchangeably.

~~19.~~ "Top of dam" means the top of the settled embankment or the elevation of the uppermost surface of a nonembankment dam, excluding accessory features, such as railings.

~~47.20.~~ "Unsafe dam, dike, or other device" means any such structure that threatens harm to life or property or is improperly maintained.

History: Effective November 1, 1989; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02,~~ 61-03-13

Law Implemented: NDCC 61-16.1-38

CHAPTER 89-08-02

89-08-02-01. Determining the capacity of dams, dikes, or other devices.

The impounding capacity of a dam is calculated based upon the elevation at the top of dam. Storage below the existing adjacent ground surface is generally excluded from the capacity of a holding pond, lagoon, or dugout. The diverting capacity of a dike is calculated based upon the area protected as measured from the effective top of dike. If the absence of the dike could result in more than fifty acre-feet of water inundating the protected area, a permit is required. The diverting capacity of a diversion is calculated based upon the runoff from the National Oceanic and Atmospheric Administration Atlas 14 twenty-five year, twenty-four hour, precipitation event. No construction can begin until a construction permit is obtained.

History: Effective November 1, 1989; amended effective April 1, 2004; January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-02. Contents of application.

A completed construction permit application must include: plans and specifications as stipulated by the department; evidence establishing a property right for the property that will be affected by the construction of the dam, dike, or other device; and any additional information required by the ~~state-engineer~~the department.

History: Effective November 1, 1989; amended effective June 1, 1998; April 1, 2004; January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03.1. Time to complete construction of structure.

Construction may not begin until a construction permit is obtained. Construction must be completed and the ~~state-engineer~~department must be notified of completion in writing within ~~two years from the date of final approval or the permit is void~~the period specified by the department on the permit, beginning from the date of final permit approval. The ~~two-year~~completion period does not begin until any appeal is complete.

History: Effective January 1, 2015, amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-03.2. Extending time to complete construction of structure.

If the ~~two-year~~completion period expires before construction is complete, the permit recipient may make a written request to the ~~state-engineer~~department for a one-year extension. Only two extensions may be granted. All requests for extensions must be made at least sixty days before the permit expiration date and must specifically state why construction has not been completed.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-04. Emergency construction permits.

A completed application for an emergency construction permit must be submitted to the ~~state-engineer~~department along with any additional information required by the ~~state-engineer~~department. If

the ~~state-engineer~~director determines an emergency exists, the ~~state-engineer~~director may issue an emergency construction permit to construct a dam, dike, or other device capable of impounding, obstructing, or diverting more than fifty acre-feet of water. An emergency construction permit will expire in six months unless extended by the ~~state-engineer~~director under section 89-08-02-05.

History: Effective April 1, 2004; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-05. Extension of emergency construction permits.

The applicant must submit a written request for an extension at least thirty days before the expiration of the emergency construction permit. If it is determined that an emergency still exists, the ~~state-engineer~~director may issue a one-time, six-month extension to the permit's expiration date. If an emergency continues to exist after the one-time extension, an applicant may reapply under section 89-08-02-04 for a new emergency construction permit.

History: Effective January 1, 2015; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-06. Removal of emergency structures.

Once the emergency has ended or upon permit expiration, whichever occurs first, all structures constructed under section 89-08-02-04 must be removed in their entirety and the disturbed area restored to preproject conditions. The applicant must notify the ~~state-engineer~~department in writing when the emergency structure has been completely removed.

History: Effective January 1, 2015; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-02-07. As built plans.

As a condition on all construction permits, the owner of the dam, dike, or other device will provide the ~~state-engineer~~department with "as built" plans within six months after the dam, dike, or other device has been constructed to provide details of the modifications that occurred during construction.

History: Effective January 1, 2015; [amended effective January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

CHAPTER 89-08-03 INSPECTIONS

Section

89-08-03-01	Inspections and Reports During Construction of Dams Over Ten Feet [3.05 meters] in Height
89-08-03-02	Monitoring During Construction by the State Engineer Department
89-08-03-03	Changes in Construction
89-08-03-04	Requested Inspections
89-08-03-05	Periodic Inspections After Construction
89-08-03-06	As Built Plans [Repealed]
89-08-03-07	Access to Dams for Inspection

89-08-03-01. Inspections and reports during construction of dams over ten feet [3.05 meters] in height.

To protect property and assure safety, the following are conditions to all construction permits for dams over ten feet [3.05 meters] in height:

1. An engineer must be in charge of and responsible for inspections during construction.
2. Inspections during construction must be performed at intervals necessary to ensure conformity with the construction permit and the plans and specifications.
3. The information obtained during each inspection must be documented in a written report. The report will specify any changes necessary under section 89-08-03-03. The inspection reports must be provided to the ~~state engineer~~department upon request.

History: Effective November 1, 1989; amended effective April 1, 2004; January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-16.1-38

89-08-03-02. Monitoring during construction by the ~~state engineer~~department.

The ~~state engineer~~department may monitor any dam, dike, or other device during construction to ensure conformity with the construction permit and the plans and specifications.

History: Effective November 1, 1989; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-11

89-08-03-03. Changes in construction.

If the ~~state engineer or engineer in charge~~director determines changes in construction are necessary to ensure safety, the ~~state engineer~~director may order the appropriate changes and may order construction be stopped until the changes are made.

History: Effective November 1, 1989; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-11

89-08-03-04. Requested inspections.

1. Upon receipt of a written complaint that a dam, dike, or other device is unsafe because of its construction, maintenance, or operation, the ~~state engineer~~department will examine the available information and determine if the complaint is justified.

2. If the ~~state-engineer~~department determines the complaint is unjustified, the ~~state-engineer~~department must notify the complainant in writing of that fact.
3. If the ~~state-engineer~~department determines the complaint is justified, the ~~state-engineer~~department will complete the necessary inspection and make a determination regarding the structure's safety. If construction is ongoing, all construction activities must cease until the ~~state-engineer~~department completes the inspection.

History: Effective November 1, 1989; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-04-11~~, 61-03-21.1, 61-03-21.2, 61-04-11

89-08-03-05. Periodic inspections after construction.

The ~~state-engineer~~department may require inspection of a dam, dike, or other device as often as necessary after construction to protect property and assure safety.

History: Effective November 1, 1989; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-04-11, 61-16.1-38

89-08-03-07. Access to dams for inspection.

The ~~state-engineer~~department has authority to enter upon land to inspect a dam during construction, conduct periodic dam inspections after construction, or conduct a dam inspection in response to a complaint that the dam is unsafe. Except in emergency situations as determined by the ~~state-engineer~~director, the ~~state-engineer~~department will request permission from the landowner to enter the property. If the landowner refuses to give permission or fails to respond within five days of the request, the ~~state-engineer~~department may request a district court order for authorization to enter the property to inspect the dam.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-21.1

CHAPTER 89-08-04

89-08-04-01. Operating plan.

By the fifteenth of February of each year, the operator of a reservoir with a capacity of more than one thousand acre-feet must submit an operating plan for that year to the ~~state engineer~~department. The ~~state engineer~~department will review the operating plan, and if deficiencies or discrepancies exist, the ~~state engineer~~department must notify the owner of the dam of the deficiencies or discrepancies. The owner of the dam must correct the deficiencies or discrepancies and return the corrected operating plan to the ~~state engineer~~department within fourteen days of receiving notice of the deficiencies or discrepancies. The operating plan must be approved by the ~~state engineer~~director before the operation of the dam. If the operator receives no response from the ~~state engineer~~department within thirty days, the operating plan is approved.

History: Effective November 1, 1989; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-21

89-08-04-02. Maintenance plan.

Dam owners must maintain their structures in an adequate manner. The ~~state engineer~~director may require the owner of a dam with a capacity of more than one thousand acre-feet to submit a maintenance plan for the dam and appurtenant works.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-21

89-08-04-03. Emergency action plan.

The owner of a high-hazard or medium-hazard dam ~~with a storage capacity of more than one thousand acre-feet~~ must submit an emergency action plan for the dam to the ~~state engineer~~department. The plan must be approved by the ~~state engineer~~director. The plan must be maintained and updated on a regular basis, and copies of all updates must be submitted to the ~~state engineer~~department.

History: Effective January 1, 2015; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-21

CHAPTER 89-10-01 SOVEREIGN LANDS

Section

89-10-01-01	Authority
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89-10-01-03	Definitions
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89-10-01-09	Specific Project Requirements [Repealed]
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89-10-01-14	Cancellation by the State Engineer <u>Director</u>
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89-10-01-31	Firearms
89-10-01-32	Tree Stands
89-10-01-33	Baiting
89-10-01-34	Dredging or Filling

89-10-01-01. Authority.

These rules are adopted and promulgated by the ~~state engineer~~ director under North Dakota Century Code chapter 61-33 to provide consistency in the administration and management of sovereign lands. These rules do not apply to the state of North Dakota's interests in oil, gas, and related hydrocarbons on sovereign lands.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~ 61-33-02, 61-33-05

89-10-01-03. Definitions.

The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the ~~state engineer~~department after application; and the authority granted in sections 89-10-01-10 and 89-10-01-19.
2. "Boardwalk" means a walk constructed of planking.
3. "Department" is defined in North Dakota Century Code section 61-03-01.2.
4. "Director" is defined in North Dakota Century Code section 61-03-01.2.
5. "Domestic use" means the use of water as defined by subsection 4 of North Dakota Century Code section 61-04-01.1.
- ~~4.6.~~ "Grantee" means the person, including that person's assigns, successors, and agents who has authorization.
- ~~5.7.~~ "Livestock" means bison, cattle, horses, mules, goats, sheep, and swine.
- ~~6.8.~~ "Navigable waters" ~~means any waters that were in fact navigable at the time of statehood, that is, were used or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water~~is defined in North Dakota Century Code section 61-33-01.
- ~~7.9.~~ "Ordinary high ~~watermark~~water mark" ~~means that line below which the action of the water is frequent enough either to prevent the growth of vegetation or to restrict its growth to predominantly wetland species. Islands in navigable waters are considered to be below the ordinary high watermark in their entirety~~is defined in North Dakota Century Code section 61-33-01.
- ~~8.10.~~ "Project" means any activity that occurs either partially or wholly on sovereign lands.
- ~~9.11.~~ "Riparian owner" means a person who owns land adjacent to navigable waters or the person's authorized agent.
- ~~10.12.~~ "Snagging and clearing" means the removal and disposal of fallen trees and associated debris encountered within and along the channel.
- ~~11.13.~~ "Structure" means something that is formed from parts, including equipment, boat docks, boat ramps, and water intakes.
- ~~12.14.~~ "Watercraft" means any device capable of being used as a means of transportation on waters.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02,~~ 61-03-13

Law Implemented: NDCC ~~61-33~~61-33-02, 61-33-05

89-10-01-04. Authorization.

Each project requires an authorization from the ~~state engineer~~department before construction or operation, except as otherwise provided by these rules.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~61-33-02, 61-33-05

89-10-01-05. Application for permit, easement, lease, or management agreement.

Applications for authorization must be on forms prescribed by the ~~state engineer and contain the information required by the state engineer. Applications must be submitted to the North Dakota State Engineer, State Office Building, 900 East Boulevard, Bismarck, North Dakota 58505-0850~~department.

History: Effective November 1, 1989; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~61-33-02, 61-33-05

89-10-01-06. Application review.

Upon receipt of a completed application, the ~~state engineer~~department must initiate a review as follows:

1. Comments must be requested from the following entities:
 - a. The state game and fish department;
 - b. The department of environmental quality;
 - c. The state historical society;
 - d. The state department of trust lands;
 - e. The state parks and recreation department;
 - f. The United States fish and wildlife service;
 - g. The park district and planning commission of any city or county where the proposed project will be located;
 - h. Any water resource district where the proposed project will be located; and
 - i. Other agencies, private entities, or landowner associations as appropriate or required by law.
2. Each entity must submit all comments in writing to the ~~state engineer~~department. The ~~state engineer~~department is not bound by any comment submitted. The ~~state engineer~~department must receive comments within thirty days of the date requests for comments were mailed.
3. Upon completion of the review and any public meeting held under section 89-10-01-07, the ~~state engineer~~department may grant, deny, or condition the application.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~61-33-02, 61-33-05

89-10-01-06.1. Record - Official notice.

Unless specifically excluded by the ~~state engineer~~director or the hearing officer, the record in each sovereign land permit application proceeding or adjudicative proceeding under North Dakota Century Code chapter 28-32 includes the following:

1. United States department of agriculture natural resources conservation service reports, including the North Dakota hydrology manual, North Dakota irrigation guide, and county soil survey reports.
2. United States geological survey and ~~state water commission~~department streamflow records.
3. National oceanic and atmospheric administration climatological data.
4. Topographic maps.
5. ~~State engineer~~Department sovereign land permit files.
6. Information in ~~state engineer~~department and state water commission files, records, and other published reports.
7. North Dakota sovereign land management plan.
8. Ordinary high ~~watermark~~water mark delineation guidelines.
9. Aerial photos.

History: Effective July 1, 2014; amended effective January 1, 2023.

General Authority: NDCC ~~28-32-02,~~ 61-03-13

Law Implemented: NDCC ~~61-33~~61-33-02, 61-33-05

89-10-01-07. Public meeting.

An information-gathering public meeting may be held by the ~~state engineer~~department before final action on a project. The procedure for notice and meeting must be as follows:

1. The ~~state engineer~~department must publish a notice of meeting in the official newspaper for each county where the project is located. The notice must be published once each week for two consecutive weeks.
2. The meeting date must be at least twenty days after the date of last publication.
3. The meeting must be conducted by the ~~state engineer~~department and the meeting may be held in Bismarck.
4. The meeting is not an adjudicative proceeding hearing under North Dakota Century Code chapter 28-32.

History: Effective November 1, 1989; amended effective August 1, 1994; July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02,~~ 61-03-13

Law Implemented: NDCC ~~61-33~~61-33-02, 61-33-05

89-10-01-08. General permit standards.

The ~~state engineer~~department may approve, modify, or deny any permit application. In deciding what action to take on a permit application, the ~~state engineer~~department must consider the potential effects of the proposed project on the following:

1. Riparian owner's rights;
2. Recreation;
3. Navigation;

4. Aesthetics;
5. Environment;
6. Erosion;
7. Maintenance of existing water flows;
8. Fish and wildlife;
9. Water quality;
10. Cultural and historical resources; and
11. Alternative uses.

History: Effective November 1, 1989; amended effective April 1, 2008; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02, 61-33-05](#)

89-10-01-10.1. Boat docks and water intakes.

Boat docks and water intakes not meeting the criteria in section 89-10-01-10 require a permit from the ~~state engineer~~[department](#). Any person who violates this section ~~is guilty of a noncriminal offense and~~ must pay a two hundred fifty dollar fee per day. The dock will be subject to removal at the dock owner's expense.

History: Effective April 1, 2009; amended effective April 1, 2010; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-03-21.3, 61-33-02, 61-33-05, 61-33-10](#)

89-10-01-10.2. Boat dock registration.

Boat docks that do not require a permit under this chapter and that are located on the Missouri River between the Oliver and Morton County line (river mile 1328.28) and Lake Oahe wildlife management area (river mile 1303.5) must be registered with the ~~state engineer~~[department](#) before placement of any such dock. The ~~state engineer~~[department](#) must provide registration forms. Any person who violates this section ~~is guilty of a noncriminal offense and~~ must pay a two hundred fifty dollar fee per occurrence. The dock will be subject to removal at the dock owner's expense.

History: Effective April 1, 2010; amended effective July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02, 61-33-05, 61-33-10](#)

89-10-01-11. Structures.

1. Except as otherwise provided in this chapter, the construction or moorage of a structure is prohibited on sovereign lands. If a structure is prohibited, the ~~state engineer must~~[department](#):
1.
 - a. ~~Issue~~[Shall issue](#) an order to the structure owner identifying the action required to modify or remove the structure and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken must be at least twenty days after the order is issued.
 - b. If the ordered action is not taken by the date specified in the order, the ~~state engineer~~[department](#) may modify or remove the structure at the structure owner's expense.

~~3.~~ c. ~~The state engineer may~~ **May** commence a civil proceeding to enforce ~~an~~**its** order ~~of the state engineer~~, or, if the ~~state engineer~~**department** modifies or removes the structure, the ~~state engineer~~**department** may assess the costs of such action against any property of the structure's owner or may commence a civil proceeding to recover the costs incurred in such action. If the ~~state engineer~~**department** chooses to recover costs by assessing the costs against property of the structure's owner and the property is insufficient to pay for the costs incurred, the ~~state engineer~~**department** may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.

~~4.~~2. A person who receives an order from the ~~state engineer~~**department** under this section may send a written request to the ~~state engineer~~**department** for a hearing. The ~~state engineer~~**department** must receive the request within ten days of the date the order **is** issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the ~~state engineer~~**director** determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the ~~state engineer~~**department** must set a hearing date without undue delay.

~~5.~~3. Any person aggrieved by the action of the ~~state engineer~~**director** may appeal the decision to the district court of the county where the sovereign lands at issue are located under North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; April 1, 2010; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 61-03-21.3, 61-03-22, ~~61-33~~[61-33-02](#), [61-33-05](#), [61-33-10](#)

89-10-01-12. Public recreational use.

The public may use sovereign lands for recreational purposes except as otherwise provided by these rules or by signage posted by the ~~state engineer~~**department**.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#)

89-10-01-13. Vehicular access.

The use of motorized vehicles on sovereign lands is prohibited, except:

1. When on government-established trails that have been permitted by the ~~state engineer~~**department**;
2. When on sovereign lands immediately adjacent to the Kimball Bottoms off-road riding area located in the south half of sections 23 and 24 and the north half of sections 25 and 26, all in township 137 north, range 80 west, Burleigh County;
3. When on state-designated off-road use areas, provided the area is managed and supervised by a government entity, the government entity has developed a management plan for the off-road area that has been submitted to the ~~state engineer~~**department**, and the managing government entity has obtained a sovereign lands permit for off-road use in the designated area;

4. To cross a stream by use of a ford, bridge, culvert, or similar structure provided the crossing is in the most direct manner possible;
5. To launch or load watercraft in the most direct manner possible;
6. To access and operate on the frozen surfaces of any navigable water, provided the crossing of sovereign lands is in the most direct manner possible;
7. To access private land that has no other reasonable access point, provided that access across sovereign lands is in the most direct manner possible;
8. By disabled people who possess a mobility-impaired parking permit under North Dakota Century Code section 39-01-15 or shoot from a stationary motor vehicle permit under subsection 10 of North Dakota Century Code section 20.1-02-05;
9. When operation is necessary as part of a permitted activity or project;
10. By the riparian owner on sovereign lands that are adjacent to the riparian owner's property when moving or tending to livestock; installing or maintaining a livestock fence; installing, maintaining, or moving an authorized agricultural irrigation structure; or when engaged in other ordinary agricultural practices, provided the listed activities do not negatively affect public use or values; or
11. When being used by government personnel in the performance of their duties.

Any person who violates this section ~~is guilty of a noncriminal offense and~~ must pay a one hundred dollar fee per occurrence.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#)

89-10-01-14. Cancellation by the ~~state engineer~~director.

The ~~state engineer~~director may cancel any authorization granted under these rules. Cancellation does not release the grantee from any liability. If an applicant is named in an active enforcement action ordered by the ~~state engineer~~department, the ~~state engineer~~department may hold any application submitted by the applicant in abeyance until the order has been satisfied.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#)

89-10-01-15. Termination by applicant.

The grantee may terminate any authorization by notifying the ~~state engineer~~department in writing, paying all fees or other money owed to the state, and reclaiming the site under section 89-10-01-18.

History: Effective November 1, 1989; amended effective July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#)

89-10-01-16. Assignments.

Any authorization granted under these regulations may only be assigned with the written consent of the ~~state engineer~~department.

History: Effective November 1, 1989; amended effective July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#)

89-10-01-17. Inspections.

The ~~state engineer~~[department](#) may inspect all projects on sovereign lands and enter upon a grantee's land during normal working hours to carry out the inspection.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#)

89-10-01-18. Reclamation.

After cancellation, termination, abandonment, or expiration of an authorization, grantee must reclaim the project location within one hundred twenty days. If the permit is for mining, reclamation must be within sixty days after the lease expires or the mining is complete. Upon written request, the ~~state engineer~~[department](#) may extend the time period if good cause is shown. If grantee fails to reclaim the site to the specifications in the authorization within the required time frame, the ~~state engineer~~[department](#) may enter and restore the project location. The grantee is liable for all reclamation costs.

History: Effective November 1, 1989; amended effective July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#)

89-10-01-20. Areas of special interest.

The ~~state engineer~~[department](#) may enter agreements for management of areas of high public value. Examples include parks, beaches, public access points, nondevelopment areas, and wildlife management areas.

History: Effective November 1, 1989; amended effective July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#)

89-10-01-24. Hunting, fishing, and trapping.

All sovereign lands are open for public hunting, fishing, and trapping, except as provided in other rules, regulations, or laws or as posted at public entry points. Posting sovereign lands with signage by anyone other than the ~~state engineer~~[department](#) is prohibited without a sovereign lands permit. Any person who violates this section ~~is guilty of a noncriminal offense and~~ must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#), [61-33-10](#)

89-10-01-26. Removal of public property.

Public property, including trees, shrubs, vines, plants, soil, gravel, fill, rocks, fossils, sod, firewood, posts, or poles, may not be removed from sovereign lands without a permit. Firewood may be removed under certain stated conditions from designated firewood cutting plots. Commercial cutting of firewood is prohibited on sovereign lands. Gathering of downed wood for campfires is allowed. A riparian owner may hay or graze sovereign lands adjacent to the riparian owner's property, unless prohibited in writing

by the ~~state engineer~~department. Berries and fruit may be picked for noncommercial use, unless prohibited by posted notice. Property may not be destroyed or defaced. Any person who violates this section ~~is guilty of a noncriminal offense and~~ must pay a two hundred fifty dollar fee per occurrence.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#), [61-33-10](#)

89-10-01-27. Cultural or historical resources.

Artifacts or any other cultural or historical resources found on sovereign lands may not be disturbed or destroyed without formal written approval from the state historical society and a permit from the ~~state engineer~~department.

History: Effective April 1, 2008; amended effective April 1, 2009; July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#)

89-10-01-32. Tree stands.

Construction of a permanent tree stand or permanent steps to a tree stand is prohibited on sovereign lands. Portable tree stands, portable steps, screw-in steps, and natural tree stands may be used. Portable tree stands and portable steps are defined as those that are held to the tree with ropes, straps, cables, chains, or bars. Screw-in steps are those that are screwed into the tree by hand without the aid of tools. Ladder-type stands that lean against the tree are portable stands. Natural stands are those crotches, trunks, down trees, etc., where no platform is used. Tree stands do not preempt hunting rights of others in the vicinity of the tree stand. Tree stands and steps may not be put up before August twentieth and must be removed within three days of the close of the archery deer season. Stands and steps not removed within three days of the close of the archery deer season are considered abandoned property and are subject to removal and confiscation by the ~~state engineer~~department. Any person who violates this section ~~is guilty of a noncriminal offense and~~ must pay a one hundred dollar fee per tree stand.

History: Effective April 1, 2009; amended effective July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#), [61-33-10](#)

89-10-01-33. Baiting.

Except as otherwise provided in this chapter, placing or using bait to attract, lure, feed, or habituate wildlife to a bait location for any purpose is prohibited on sovereign lands. Bait includes grains, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting or management activities conducted by the ~~state engineer~~department. Bait may be used to lure and take furbearers when engaged in lawful trapping activities. Any person who violates this section ~~is guilty of a noncriminal offense and~~ must pay a one hundred dollar fee per occurrence.

History: Effective April 1, 2009; amended effective July 1, 2014; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~, 61-03-13

Law Implemented: NDCC ~~61-33~~[61-33-02](#), [61-33-05](#), [61-33-10](#)

89-10-01-34. Dredging or filling.

1. Unless permitted by the ~~state engineer~~department, dredging or filling on sovereign lands is prohibited. If prohibited dredging or filling occurs, the ~~state engineer must~~department:

4. a. ~~Issue~~ Shall issue an order to the violator identifying the action required to restore the sovereign lands and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken must be at least twenty days after the order is issued.
2. b. If the ordered action is not taken by the date specified in the order, the ~~state-engineer~~ department may take any action to restore the sovereign lands at the violator's expense.
3. c. ~~The state-engineer may~~ May commence a civil proceeding to enforce ~~an~~ its order ~~of the state-engineer, or,~~ if the ~~state-engineer~~ department takes action to restore sovereign lands, the ~~state-engineer~~ department may assess the costs of such action against the riparian owner's property where the dredging or filling occurred or may commence a civil proceeding to recover the costs incurred in such action. If the ~~state-engineer~~ department chooses to recover costs by assessing the costs against the riparian owner's property where the dredging or filling occurred and the property is insufficient to pay for the costs incurred, or if the riparian owner was not the party responsible for the dredging or filling, the ~~state-engineer~~ department may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.
4. 2. A person who receives an order from the ~~state-engineer~~ department under this section may send a written request to the ~~state-engineer~~ department for a hearing. The ~~state-engineer~~ department must receive the request within ten days of the date the order is issued. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the ~~state-engineer~~ director determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the ~~state-engineer~~ department must set a hearing date without undue delay.
5. 3. Any person aggrieved by the action of the ~~state-engineer~~ director may appeal the decision to the district court of the county where the sovereign lands at issue are located under North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective April 1, 2010; amended effective July 1, 2014; January 1, 2023.

General Authority: NDCC ~~28-32-02,~~ 61-03-13

Law Implemented: NDCC ~~61-03-21.3, 61-03-22, 61-33~~ 61-33-02, 61-33-05, 61-33-10

CHAPTER 89-11-01

89-11-01-01. Definitions.

1. "Commission" is defined in North Dakota Century Code section 61-02-02.
2. "Department" is defined in North Dakota Century Code section 61-03-01.2.
3. "Livestock producer" means an individual who breeds or raises livestock or operates a dairy farm, who normally devotes the major portion of the individual's time to farming or ranching activities, and who normally receives at least fifty percent of the individual's annual gross income from farming or ranching.
- ~~2.4.~~ "Water supply project" includes the components and installation necessary to transfer and provide water from a water source to drought-affected livestock.

History: Effective July 1, 1992; amended effective April 1, 2008; July 1, 2014; April 1, 2018; January 1, 2023.

General Authority: NDCC ~~28-32-02~~61-02-11, 61-03-13, ~~61-34-03~~

Law Implemented: NDCC 61-34-01, 61-34-02, 61-34-03

89-11-01-03. Applicant eligibility.

1. The applicant must be a livestock producer with livestock water supply problems caused by drought.
2. The applicant must first apply for and have been denied cost-share assistance from the United States department of agriculture farm service agency.
3. The applicant must receive department approval for a water supply project. A water supply project completed before the program activation date is not eligible.

History: Effective July 1, 1992; amended effective August 27, 2002; April 1, 2008; April 1, 2018; January 1, 2023.

General Authority: NDCC ~~28-32-02~~61-02-11, 61-03-13, ~~61-34-03~~

Law Implemented: NDCC 61-34-02, 61-34-03, 61-34-04

89-11-01-04. Funding - Priority - Eligible items.

1. The commission shall provide funds for the program to the extent funding is available. Priority will be based on earliest completed application date.
2. Cost-share assistance may only be used for water supply projects that will provide a solution to a drought-related water supply shortage.
3. All wells drilled with funds provided under this program must be drilled by a North Dakota certified water well contractor as defined by North Dakota Century Code section 43-35-02.
4. Eligible items include new water wells, rural water system connections, pipeline extensions, pasture taps, and associated works, labor, materials, and equipment rentals for work completed by the producer to develop new water supply projects.
- ~~5. The applicant may receive up to fifty percent of the eligible costs, not to exceed four thousand five hundred dollars per project, with a limit of three projects per applicant.~~

History: Effective July 1, 1992; amended effective January 1, 1993; August 27, 2002; April 1, 2008; July 1, 2014; April 1, 2018; January 1, 2023.

General Authority: NDCC ~~28-32-02~~61-02-11, 61-03-13, ~~61-34-03~~

Law Implemented: NDCC 61-34-02, [61-34-03](#), [61-34-04](#)

89-11-01-06. Application procedure.

1. Requests for assistance must be on a commission form and include:
 - a. Written proof the applicant applied for and was denied cost-share assistance from the United States department of agriculture farm service agency, including the reason for the denial.
 - b. An area map indicating the proposed water supply project location.
 - c. A proposed water supply project cost estimate.
 - d. Verification the applicant is a livestock producer.
2. The ~~chief engineer~~[department](#) must review applications and acknowledge their receipt. The ~~chief engineer~~[department](#) must, within available funding limits, provide assistance to those livestock producers whose applications are approved. The applicant must agree to:
 - a. Complete the project within one hundred eighty days of receiving funding approval notification. The ~~chief engineer~~[department](#) may grant a time extension if a written request providing just cause is submitted.
 - b. Provide actual expenditure receipts.
 - c. Grant the ~~commission~~[department](#) or its agent the right to enter the land to inspect the completed water supply project after giving reasonable notice to the applicant.
 - d. Indemnify and hold harmless the state of North Dakota, the commission, [the department](#), and their agents from all claims resulting from or arising out of the activities of the applicant or applicant's agents.
3. Application forms may be obtained by contacting:

~~North Dakota State Water Commission~~
~~900 East Boulevard~~
~~Bismarck, ND 58505~~
~~(701) 328-2750~~
~~www.swc.nd.gov~~ [the department](#).

History: Effective July 1, 1992; amended effective August 27, 2002; July 21, 2006; April 1, 2008; July 1, 2014; April 1, 2018; [January 1, 2023](#).

General Authority: NDCC ~~28-32-02~~[61-02-11](#), 61-03-13, ~~61-34-03~~

Law Implemented: NDCC 61-34-02, [61-34-03](#), 61-34-04

CHAPTER 89-12-01

89-12-01-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Commission" ~~means the North Dakota state water commission~~ is defined in North Dakota Century Code section 61-02-02.
2. "Department" is defined in North Dakota Century Code section 61-03-01.2.
3. "Design and construction" means preparation of the final design plans and the construction of a project.
- 3-4. "Feasibility study" means a report of sufficient detail to provide a sound estimate of capital costs, water costs to users, and operation, maintenance, and replacement costs.
- 4-5. "Garrison Diversion" means Garrison Diversion Conservancy District.
- 5-6. "Preliminary engineering report" means a reconnaissance level report containing sufficient information to determine whether additional detailed studies are merited.
- 6-7. "Program funds" means money available for municipal, rural, and industrial projects through the Garrison Diversion Reformulation Act of 1986, as amended by the Water Resources Development Act of 2000, Pub. L. 106-541, 114 Stat. 2572 (2000), administered by the bureau of reclamation.
- 7-8. "Public water system" means a piped potable water system with at least fifteen service connections or regularly serving at least twenty-five individuals.
- 8-9. "Regional water system" is a system that provides water to at least four public water systems and may also include rural water users.
- 9-10. "Rural water users" means all users, excluding incorporated cities.

History: Effective June 1, 1994; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02, 61-02-14~~ 61-02-11, 61-02-14

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-03. Application for feasibility study funding.

1. To be considered for program funds, the project sponsor must submit an application to the ~~chief engineer~~ department and Garrison Diversion that includes:
 - a. Information explaining the need for the project, including its objectives and benefits.
 - b. The area to be served by the project.
 - c. A preliminary engineering report.
 - d. The approximate cost of the project.
 - e. The amount of funding sought from program funds and the amount the project sponsor intends to contribute to the feasibility study.
 - f. The results of all efforts made to secure funds from sources other than program funds. Provide the current rate schedule for the water supply and treatment systems.

- g. Other information the project sponsor believes pertinent or that the ~~chief-engineer~~department requests.
2. During review of the application, the ~~chief-engineer~~department, in consultation with Garrison Diversion, may decide which parts of the project are eligible for funding from program funds.
3. After review of the application, the ~~chief-engineer~~department may prepare a report setting forth the recommendations regarding the project feasibility study funding. If a report is prepared, it must address whether the project is consistent with statewide plans and programs, and the ~~chief-engineer~~department will provide a copy to the commission and Garrison Diversion.
4. The commission and Garrison Diversion will jointly approve program funds within the district.

History: Effective June 1, 1994; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02, 61-02-14~~61-02-11, 61-02-14(2)

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

89-12-01-06. Application for design and construction funding.

1. A project sponsor requesting design or construction funding must submit a feasibility study to the ~~chief-engineer~~department.
2. For projects that deliver Missouri River water to the Hudson Bay drainage area, a determination must be made that treatment will be provided to meet requirements of the Boundary Waters Treaty Act of 1909.
3. The project sponsor must submit two copies of the feasibility study to Garrison Diversion and one copy to the ~~chief-engineer~~department.
4. After review of the feasibility study, the ~~chief-engineer~~department, in consultation with Garrison Diversion, may prepare a report setting forth the recommendations regarding the project design or construction funding. If a report is prepared, it must address whether the project is consistent with statewide plans and programs. The ~~chief-engineer~~department will provide a copy to the commission and Garrison Diversion.
5. The commission and Garrison Diversion will jointly approve program funds within the district.

History: Effective June 1, 1994; amended effective January 1, 2015; January 1, 2023.

General Authority: NDCC ~~28-32-02, 61-02-14~~61-02-11, 61-02-14(2)

Law Implemented: NDCC 54-40-01, 57-51.1-07.1, 61-02-14, 61-02-24.1, 61-02-64, 61-24-08

CHAPTER 89-14-01

89-14-01-03. Design flood frequency.

The following table provides the minimum design standard recurrence interval of the event for which each type of stream crossing must be designed. Nothing contained in this chapter is intended to restrict an entity from providing greater capacity.

Type of Crossing	State Highway System						County	
	Urban System		Rural System				Rural System	
	Regional	Urban Roads	Principal Arterial		Minor Arterial	Major Collector	Major Collector	Off ⁴ System
Interstate			Other					
Bridges & Reinforced Concrete Boxes	25 year ²	25 year ²	50 year ²	50 year ²	50 year ²	25 year ²	25 year ^{2,3}	15 year ^{2,3}
Roadway Culverts	25 year ²	25 year ²	50 year ²	25 year ²	25 year ²	25 year ²	25 year ^{2,3}	15 year ^{2,3,5}
Storm Drains	10 year ¹	5 year ¹	10 year ²	10 year ²	10 year ²	10 year ²		
Underpass Storm Drains	25 year ¹	25 year ¹	50 year ²	25 year ²	25 year ²	25 year ²		

¹Discharges must be computed using the rational method or other recognized hydrologic methods.

²Discharges must be computed using United States geological survey report [92-40202015-5096](#) or other recognized hydrologic methods.

³If an overflow section is provided, the pipes and the overflow section, in combination, must pass the appropriate design event within the headwater limitations provided in this chapter.

⁴Off system roads include all township roads.

⁵For township roads, the recurrence interval is 10 years.

History: Effective May 1, 2001; amended effective July 27, 2001; January 1, 2015; [January 1, 2023](#).

General Authority: NDCC 24-02-01.1, 24-02-01.5, ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-04. Floodplain consideration - Upstream development.

All stream crossings must comply with applicable floodplain regulations and regulatory floodway requirements [per North Dakota Century Code chapter 61-16.2](#). If a stream crossing is being replaced and buildings or structures are located upstream from the crossing, the stream crossing must not be reconstructed in a manner that increases the likelihood of impacts to those upstream buildings or structures, even if the capacity of the crossing being replaced was greater than the capacity otherwise required by this chapter. Any stream crossing constructed as part of a newly constructed roadway must be constructed to pass ~~a one-hundred-year event~~ [the federal emergency management agency identified one-percent annual-chance flood event flow](#) without the resulting increase in headwater impacting any existing buildings or structures. Structures, for the purposes of this section, include grain bins, silos, feedlots, and corrals. Structures do not include pasture fencing.

History: Effective May 1, 2001; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC 24-02-01.1, 24-02-01.5, ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

89-14-01-06. Deviations.

The board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or any individual, firm, corporation, or limited liability company may deviate from the standards contained in this chapter if the deviation is approved in writing by the ~~state engineer~~ [department of water resources](#) and the department of transportation. A request to deviate from the standards must be made in writing and must set forth the reasons for the proposed deviation. The ~~state engineer~~ [department of water resources](#) and department of transportation may grant a deviation for good and sufficient cause after considering public safety, upstream and downstream impacts, and other relevant matters.

The department of transportation may deviate from these standards if the department determines it is appropriate to do so and the crossings are designed under scientific highway construction and engineering standards. The basis for the department's decision must be documented in writing.

Roads constructed as part of a surface coal mining operation for use solely as part of the mining operation are not subject to the requirements of this chapter. Roads constructed because of a surface coal mining operation for use by the public are bound by the requirements of this chapter, but deviations may be requested under this section.

History: Effective May 1, 2001; amended effective January 1, 2015; [January 1, 2023](#).

General Authority: NDCC 24-02-01.1, 24-02-01.5, ~~28-32-02~~, 61-03-13

Law Implemented: NDCC 24-03-06, 24-03-08, 24-06-26.1

TITLE 99
STATE GAMING COMMISSION

JANUARY 2023

ARTICLE 99-01.3 GAMES OF CHANCE

Chapter	
99-01.3-01	Organization Licenses and Local Permits
99-01.3-02	General Rules
99-01.3-03	Accounting Rules
99-01.3-04	Bingo
99-01.3-04.1	Electronic Quick Shot Bingo
99-01.3-05	Raffles
99-01.3-05.1	<u>Electronic</u> Fifty-Fifty Raffle Systems
99-01.3-06	Pull Tabs, Club Special, Tip Board, Seal Board, Prize Board, and Punchboard
99-01.3-06.1	Electronic Pull-Tab <u>Pull-Tab</u> Devices
99-01.3-07	Sports Pools
99-01.3-08	Twenty-One
99-01.3-09	Poker
99-01.3-10	Calcuttas
99-01.3-11	Paddlewheels
99-01.3-12	Pull-Tab <u>Pull-Tab</u> Dispensing Devices
99-01.3-12.1	Prize Board Dispensing Devices
99-01.3-13	Bingo Card Dispensing Devices [Repealed]
99-01.3-14	Eligible Uses
99-01.3-15	Distributors
99-01.3-16	Manufacturers

CHAPTER 99-01.3-01

99-01.3-01-03. License.

1. An organization may not conduct games at a site unless the attorney general first approves a site authorization and license for that city or county. A separate license is required for each city or county. For an initial application for a license for an organization that desires to be recognized as an eligible organization, the attorney general shall determine whether the organization qualifies by examining a copy of an organization's articles of incorporation, charter, bylaws, board of directors' minutes for the previous two years, or any other documents or records considered necessary to determine its primary purpose and date of origin. If the attorney general determines that an organization's actual primary purpose does not qualify it as an eligible organization, the attorney general shall deny the application.

2. A license is effective for one year beginning July first and ending June thirtieth and may be issued at any time during the fiscal year. However, the annual license fee is not prorated. If an organization plans to conduct a raffle on or after July first, a license may be issued up to twelve months prior to the beginning of the licensing period. If an organization received a ~~charity-local~~restricted event permit during the fiscal year, it may not receive a state license.
3. When an organization first applies for a license to conduct games of chance, the license may not be issued to the organization until after its gaming manager and individuals responsible for recordkeeping and independent audit functions have satisfactorily ~~demonstrates~~demonstrated to the attorney general that the organization is capable of properly managing and controlling the games that it intends to conduct and has provided a copy of the organization's internal control and policy manuals.
4. If an organization only conducts a raffle or calcutta in two or more cities or counties, the organization may apply for a consolidated license prescribed by the attorney general and remit a one hundred fifty dollar license fee for each city or county in which a site is located.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-03

99-01.3-01-05. Permits.

1. A permit is issued by a city or county governing body and may be for a site located on public or private property. It may be restricted, including types of games, days of the week, and designation of an area at a site where games will be conducted. A governing body may revoke or suspend a permit based on good cause.
2. A permit is required for each site at which games have been authorized. The primary prize under a permit may not exceed ~~six~~eight thousand dollars and total prizes of all games may not exceed ~~twelve~~forty thousand dollars per year. A donated merchandise prize is valued at its retail price.
3. When a governing body issues a permit, it shall assign a permit number, specify the day or period for which it is effective, identify the game types authorized, and send a copy to the attorney general within fourteen days from when it was issued. An organization that has a license may not at the same time have a permit.
4. An organization may receive one or more local permits to conduct a raffle, bingo, or sports pool from a city or county governing body during a year and may be issued two or more local permits at the same time. For a calendar raffle, a local permit may be issued for a calendar year. If an organization plans to conduct a raffle, a permit may not be issued more than twelve months prior to the first raffle drawing date unless authorized by the attorney general.
5. An organization deemed as a state political party or legislative district party committee only may conduct raffles under a local permit and may use the net income for a political purpose.
6. An organization may receive one ~~charity-local~~restricted event permit to conduct a raffle, bingo, sports pool, paddlewheels, twenty-one, or poker from a city or county governing board during a year. If the organization has received a local permit or license during the fiscal year, it may not receive a ~~charity-local~~restricted event permit. If the organization received a ~~charity-local~~restricted event permit during the fiscal year, it may not receive a local permit. For a ~~charity-local~~restricted event permit an organization shall within thirty days of the event file a report on a prescribed form with the attorney general and governing body.

~~6.7.~~ For all game types conducted, an organization shall comply with section 99-01.3-02-08. For bingo, an organization shall comply with sections 99-01.3-04-01 and 99-01.3-04-02 and the applicable subsections of section 99-01.3-04-03. For a raffle, an organization shall comply with sections 99-01.3-05-01 through 99-01.3-05-04 and subsections 1 through 3 of section 99-01.3-05-05. For a sports pool, an organization shall comply with section 99-01.3-07-01. For twenty-one, an organization shall comply with sections 99-01.3-08-01, 99-01.3-08-02, 99-01.3-08-08, 99-01.3-08-09, 99-01.3-08-10, 99-01.3-08-11, ~~and~~ 99-01.3-08-12, and 99-01.3-08-13. For poker, an organization shall comply with sections 99-01.3-09-01 through 99-01.3-09-06. For paddlewheels, an organization shall comply with subsection 1 of section 99-01.3-11-01 and the applicable subsections of section 99-01.3-11-02 if conducted with tickets, or subsection 2 of section 99-01.3-11-01 and the applicable subsections of sections 99-01.3-11-03 and 99-01.3-11-04, and ~~section~~sections 99-01.3-11-05 and 99-01.3-11-06 if conducted as a table game.

~~7.8.~~ Any advertising of a gaming event must include the name of the organization and include the purpose for which the net proceeds will be used. Advertising must cease once the local permit or ~~charity local~~restricted event permit has expired.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-03, 53-06.1-06

CHAPTER 99-01.3-02

99-01.3-02-01. Definitions.

As used in this article:

1. "Application software" means those computer programs that direct an electronic game system to perform those specific information-processing activities that permit the operation of the electronic game, permit the collection and recording of game information, and permit the reporting of that information to the attorney general. The application software overlays the operating system software and is unable to function without the operating system software.
2. "Attorney general" includes an agent of the attorney general.
3. "Bar" means retail alcoholic beverage establishment where alcoholic beverages are dispensed and consumed. This does not include off-sale liquor stores or gas stations, grocery, or convenience stores. A bar must be licensed under North Dakota Century Code chapter 5-02 and is devoted to the serving of alcoholic beverages for consumption by guests on the premises. The term includes a bar located within a hotel, bowling center, or restaurant.
4. "Bar employee" is a person, employed by a bar that is not operated by an organization, who redeems winning pull tabs or prize boards, or both, involving a dispensing device, redeems credit ticket vouchers involving an electronic ~~pull-tab~~pull-tab device, or who sells raffle tickets or sports pool chances on a board for an organization.
5. "Bingo session" means a program of predetermined number of bingo games that are successively played. Intermissions may be included in the program. A session may not extend beyond a business day. However, any session in progress which continues past midnight must be considered played on the day the session began.
6. "Business day" relates to the typical hours in a day when normal business operations take place. For games of chance, this includes a site's start of business until the close of business for a day, which may continue past midnight.
7. "Cash on hand" means coin, currency, and checks, plus an IOU due from another source of cash or nongaming funds, less an IOU owed to another source of cash or nongaming funds.
- 7:8. "Cash prize" means coin, currency, marketable security, and a similar item that can be readily redeemed or converted into legal tender. Cash prize does not include precious metal bullion, a coin of precious metal or antique coin that has a market value greater than its face value, or a merchandise gift certificate. The value of a marketable security is its cost.
- 8:9. "Cash profit" means:
 - a. For bingo and electronic quick shot bingo, total ending cash on hand, less starting cash on hand and prizes paid by check, for a bingo session.
 - b. For a raffle, total receipts less prizes paid by cash and check.
 - c. For a commingled game of pull tabs, total ending cash on hand, less starting cash on hand and cash prizes paid by check, for a day's activity.
 - d. For a commingled game of pull tabs involving a dispensing device, total currency withdrawn from a dispensing device, less credit paid on a credit redemption register, cash long or short from an employee bank, and prizes paid, for an interim period.
 - e. For each manufacturer's system of commingled ~~games of~~ electronic ~~pull tabs~~pull-tab games at a site, total currency ~~withdrawn from all~~and total dollar value of credit ticket

vouchers in the devices ~~at a site~~, less total dollar value of credit ticket vouchers in devices and paid by a bar or organization employee, credits paid on a credit redemption register, and cash long or short from an employee bank, ~~and total credit ticket vouchers paid~~, for an interim period.

- f. For a club special, tip board, seal board, and punchboard, the total daily difference between ending cash on hand and starting cash on hand and less prizes paid by check, for the game.
- g. For a prize board, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check and cost of coins, for the game.
- h. For a prize board involving a dispensing device, total currency withdrawn from a dispensing device, less total cash prizes paid, prizes paid by check, cost of coins, credit paid on a credit redemption register, and cash long or short from an employee bank, for the game.
- i. For a sports pool, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check.
- j. For twenty-one, and paddlewheels described by subsection 2 of section 99-01.3-11-01, total ending cash on hand, plus drop box cash, less total starting cash on hand, for a day's activity.
- k. For poker, total ending cash on hand, less starting cash on hand, less prizes paid by check, for a day's activity.
- l. For calcuttas, total ending cash on hand, less starting cash on hand, prizes paid by check, and refunds to players, for the event.
- m. For paddlewheels described by subsection 1 of section 99-01.3-11-01, total ending cash on hand, less starting cash on hand and prizes paid by check, for a paddlewheel ticket card.

9:10. "Conduct of games" means the direct operation of a game on a site, including placing pull tabs in, withdrawing currency from, and buying back redeemed winning pull tabs dispensed from a dispensing device; and withdrawing currency from and buying back redeemed credit ticket vouchers dispensed from an electronic ~~pull-tab~~pull-tab device.

40:11. "Deal" in pull tabs, including electronic deals means each individual game or series of ~~pull-tab~~pull-tab packages which makes up a game with a specific form number and a unique serial number.

44:12. "Electronic ~~pull-tab~~pull-tab game" means a game family with a common game name, theme, symbols, and ticket count which allows for a variety of price per play denominations and prize payouts under different form numbers.

42:13. "Employee" includes a person employed by an organization, an employee of a temporary employment agency who provides gaming-related services to an organization, and a volunteer of an organization.

43:14. "Flare" refers to a flare or master flare as follows:

- a. Flare. A flare is a display with the state gaming stamp affixed which describes a punchboard, sports-pool board, calcutta board, deal of pull tabs, club special, tip board, prize board, seal board, and raffle board. The flare for a punchboard is its face sheet. A

flare for a sports-pool board, calcutta board, prize board, club special, tip board, seal board, and raffle board is the game board.

- b. Master flare. A master flare for a game of pull tabs is the same as a "flare" but it does not have a state gaming stamp affixed. A master flare for paddlewheels is described by subsection 1 of section 99-01.3-11-02.

~~44.15.~~ "Gaming equipment" means a game piece or device specifically designed for use in conducting games, including integral components of a dispensing device such as a currency validator, processing board, EPROM microchip or other data storage device, attached bar code credit devices, and card shuffling devices. This includes all electronic ~~pull-tab~~~~pull-tab~~ operating systems and devices, electronic quick shot bingo operating systems and devices, electronic fifty-fifty raffle systems and devices, and their related hardware and software. The term excludes fill and credit slips, promotional paper bingo cards, bingo daubers, video surveillance equipment, jar bars, jar containers, poker tables, raffle drums, double admission tickets, table covers, dealing shoes, discard holders, plungers, shoe and card covers, chip spacers, and weight scales.

~~45.16.~~ "Inside information" is any information about the status of a game when that game is conducted that may give a person an advantage over another person who does not have that information, regardless if the person uses or does not use the information, when providing that information is prohibited by the gaming law or rules. It includes information provided through written, verbal, or nonverbal communications that implies or expresses the number of unsold chances; relationship of a game's cash on hand to its ideal adjusted gross proceeds; number of unredeemed top tier or minor winning game pieces that is not posted, value of a hole card in twenty-one, number under the tape of a sports-pool board, or number under a seal.

~~46.17.~~ "Organization" in reference to a local permit includes a "group of people" working together for a public-spirited cause.

~~47.18.~~ "Player" is an individual who purchases a game piece or places a wager in a game of chance. An organization may not be a player in any games of chance the organization is conducting. A business that is not an organization with a gaming license or permit for the event, may purchase raffle tickets; however, an individual's name representing the business that bought the tickets must be recorded on the raffle ticket.

~~48.19.~~ "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.

~~20.~~ "Primary game" is the principal game conducted on a site. Determining factors include frequency of conduct, square footage used, duration of time conducted, and volume of activity.

~~49.21.~~ "Retail price" means the purchase price paid by an organization, excluding sales tax.

~~20.22.~~ "Volunteer" means a person who conducts games for no compensation. A volunteer may receive a gift not exceeding a total retail price of thirty dollars for a consecutive twenty-four-hour period, cash tips, and reimbursement for documented business expenses. No gift may be cash or convertible into cash. See definition of employee.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-02-02. Record check.

1. An organization or distributor may not employ a person as a temporary or permanent "employee" until the organization or distributor has initiated a record check on the person, the person has independently requested a record check from the bureau of criminal investigation within one year before employment, or a person is not required to have a record check according to subsection 45. However, an organization or distributor may temporarily employ a person pending the results of a record check.
2. An organization or distributor shall initiate a record check of a person by submitting a "request for record check" form to the attorney general within twenty-one calendar days of the first day of employment. If special circumstances exist, including an applicant residing out of state, the organization shall follow procedures prescribed by the attorney general. An organization or distributor may only request a record check of a person who has a written promise of employment or who is temporarily employed pending the result of the record check. A person shall attest to the accuracy of the information on the form and authorize the attorney general to release information on any criminal record found, including a copy of the bureau of criminal investigation's criminal history record information, to an organization or distributor which requested the record check.
3. An organization shall initiate a record check on employees at least every six years, commencing with the date of employment.
4. For the purpose of this section, the definition of an "employee" is:
 - a. A person who directly operates games on a site;
 - b. A person who is a shift or gaming manager;
 - c. A person who places a deal of pull tabs in a dispensing device, removes currency from a device, or reimburses a bar for redeemed pull tabs or credit ticket vouchers;
 - d. A person who is a member of a drop box cash count team; or
 - e. A person who directly sells or distributes gaming equipment for a distributor.
5. These employees of an organization are not required to have a record check:
 - a. A volunteer, except a gaming manager or person who is a member of a drop box cash count team;
 - b. An employee who is sixteen or seventeen years of age;
 - c. ~~An employee who has an expired work permit and who continues to be employed by the same organization or distributor that the person was employed by when the work permit expired;~~
 - ~~d.~~ An employee who has had a record check done and, within one year of the record check, has become reemployed by the same organization or employed by a different organization, distributor, or bar than the person was employed by when the record check was done, and who provides the results of the record check and, if applicable, a copy of the bureau of criminal investigation's criminal history record information, to the new employing organization, distributor, or bar; or
 - e.d. An employee, other than a gaming manager, who only conducts a calcutta, raffle, poker, or sports pool or is employed by an organization that conducts games on no more than fourteen days during a calendar year.

6. The attorney general may require fingerprints of a person. A local law enforcement agency may charge a fee for taking fingerprint impressions.
7. The fee for a record check is fifteen dollars and is not refundable. However, if a federal agency or local law enforcement agency has done a record check, the attorney general may waive the fee. The fee must be remitted by an organization, distributor, or person with the request form.
8. The attorney general shall conduct the record check and provide the results to an organization or distributor which requested the record check ~~and the person on whom the record check was done~~ unless a federal or local law enforcement agency conducts a record check. This notice must indicate whether a criminal record was found or not found. If a criminal record is found, the attorney general shall also provide an organization or distributor ~~and person~~ with a copy of the bureau of criminal investigation's criminal history record information. An organization or distributor shall review this report to determine whether a person is eligible for employment as an employee according to subdivision a or b of subsection 5 of North Dakota Century Code section 53-06.1-06.
9. If a person is not eligible for employment but has been temporarily employed pending the results of a record check, an organization or distributor, within five days of receiving the copy of the record check, shall terminate the person's employment. This period cannot be extended without consent of the office of attorney general.
10. An organization or distributor shall retain the results and criminal history record information from the federal or local law enforcement licensing document for the time period prescribed by federal law.
11. If a person, while employed by an organization or distributor, pleads guilty to or has been found guilty of a felony or misdemeanor offense referenced by subdivisions a and b of subsection 5 of North Dakota Century Code section 53-06.1-06, the person shall immediately notify the organization or distributor. Upon notification, an organization or distributor, within five days, shall terminate the person's employment unless the person received a deferred imposition of sentence ~~or deferred prosecution~~ and has fully complied with the terms of the deferral.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-02-03. Restrictions and requirements.

1. An employee shall wear an identification tag while working in the gaming area of a site. The tag must display a person's name, which may be the employee's middle name or a shortened form of a proper name, and first initial of the last name or the person's identification number, and organization's name. The tag must be worn on the upper one-third of a person's body. An organization shall provide an identification tag to a gaming employee and is responsible for ensuring that the tag is properly displayed.
2. An organization shall have the gaming law; chapter 99-01.3-02, general rules; chapter 99-01.3-03, accounting rules; and the rules chapter of each game type conducted at a site available in the gaming area for review by any person.
3. An organization shall have a policy manual on its conduct and play of games in the gaming area at a site available for review by any person. The manual must include policies for resolving a question, dispute, or violation of the gaming law or rules. The manual cannot include internal controls.

4. An organization's top official shall provide to the governing board and membership in writing, or by electronic publication method, each quarter information on an organization's adjusted gross proceeds; cash profit; cash long or short; net proceeds; excess expenses; reimbursement of excess expenses; and, for a fraternal, veterans, or civic and service organization, a list of eligible uses. If an administrative complaint is issued to an organization, the top official shall disclose the allegation, in writing, to the board within seven days from the date the complaint was received. If an allegation is substantiated, the top official shall disclose to the board, in writing, the allegation and sanction imposed within ninety days of the final disposition of the complaint. The organization shall disclose to the membership how they may obtain information on the quarterly gaming activity and any information regarding the final disposition of a complaint. This information and how it was provided to the governing board and membership must be included in an organization's records.
5. A person may not modify a state gaming stamp or flare, including a last sale prize. An organization may not, independent of a distributor, add or delete a last sale prize.
6. A person under the age of twenty-one may not conduct ~~or play games, except bingo and raffles, and, at an alcoholic beverage establishment,~~ and may not be a member of a drop box cash count team at an alcoholic beverage establishment. An employee under the age of eighteen may not count drop box cash. A person under the age of sixteen may not conduct bingo. ~~A person under the age of eighteen may not play electronic quick shot bingo or use a bingo card marking device that allows a player to purchase bingo cards with credits posted on the device to play bingo.~~
7. An organization may not pay any compensation, expense, or fee to an entity or person based on the number of participants for an event, or on a participatory or graduated rate of gross proceeds or adjusted gross proceeds for any game type conducted.
8. An employee or a bar employee may not use inside information or provide inside information to any person.
9. The attorney general may waive a rule when it is for the best interest of the gaming industry and public.
10. If an organization does not plan to reapply for a license for the next licensing period or relinquishes a license, it shall return its unplayed games, with state gaming stamps, to the attorney general or distributor. An organization may not destroy an unplayed or unreported game without permission of the attorney general.
11. When an organization disposes played deals of pull tabs, club specials, prize boards, tip boards, seal boards, punchboards, and casino chips, the disposal method must assure complete destruction. When disposing of a dispensing device, the organization shall ensure that the device is rendered completely inoperable, which includes removing all electronics from the device.
12. If an organization is forced to dispose of accounting records or game pieces damaged in a natural or extraordinary disaster, it shall document each item disposed and provide a copy of the documentation to the attorney general within fourteen days before the disposal.
13. Any ~~incidence~~incident interrupting the operation or affecting the security or integrity of an electronic fifty-fifty raffle system, site system with bingo card marking devices, ~~or~~ electronic pull-tab operating system must be reported to the attorney general by the next business day from the date of occurrence.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-02-04. Equipment acquisitions and use.

1. An organization shall procure gaming equipment only from a licensed distributor. However, an organization may:
 - a. Buy raffle tickets with a detachable stub from a printer, buy double roll tickets from any vendor, or construct a raffle board;
 - b. Buy, lease, or sell a used ~~pull tab~~[pull-tab](#) dispensing device, [including electronic pull-tab devices](#), from or to a distributor or another organization provided that a distributor records the transaction on a sales invoice;
 - c. Buy, sell, rent, lend, exchange, or give its own used playing cards, jar bar, jar container, twenty-one or poker table, video surveillance equipment, raffle drum, bingo hard cards, bingo daubers, bingo machine, flashboard, table cover, dealing shoe, discard holder, plunger, shoe and card cover, poker chips, chip tray, chip spacers, paddlewheel, paddlewheel table, or weight scales from or to any organization. An organization may not sell or otherwise provide any of these particular items or any other item of gaming equipment, except playing cards, to any other person unless approval is obtained from the attorney general; or
 - d. Buy a twenty-one, paddlewheel, or poker table, and jar bar which has been designed and constructed by a carpenter provided that the table playing surface for twenty-one and paddlewheel tables, drop box, and any related gaming equipment is purchased from a distributor.
2. An organization may not use or knowingly permit its gaming equipment to be used for an illegal purpose.
3. An organization or an employee may not conduct or possess a deal of pull tabs, club special, tip board, seal board, raffle board, prize board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards unless its flare has a gaming stamp.
4. If an organization or distributor suspects that a deal of pull tabs, club special, tip board, prize board, or punchboard may be defective, the organization or distributor shall comply with guidelines prescribed by the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; October 1, 2006; July 1, 2010; April 1, 2016; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-14

99-01.3-02-06. Rental agreement.

1. A rental agreement must be signed and dated by a lessor and organization.
2. An agreement must contain:
 - a. Term of the agreement which must be on a fiscal year basis from July first to June thirtieth or, if a site authorization is for a shorter period, the term is for the shorter period. Except for a site where bingo is the primary game, an agreement may not exceed five years;

- b. Monetary consideration;
- c. The inclusion of this statement with proper selections made:

"The lessor agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab, redeem a credit ticket voucher, pay a prize board cash prize, and award a prize board merchandise prize involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization";

- d. If an organization provides a lessor with a temporary loan of funds for redeeming winning pull tabs, credit ticket vouchers, or for paying prize board cash prizes involving a dispensing device, a statement that the lessor agrees to repay the entire loan immediately when the organization discontinues using a device at the site and adsorb a loss related to a loss or theft of the temporary loan of funds; and

- e. Statements that:

- (1) Bingo is or is not the primary game conducted;
- (2) Twenty-one or paddlewheels, or both (involving a playing table), is or is not conducted and the number of tables on which the rent is based, including the number of tables on which a wager over five dollars is accepted;
- (3) Pull tabs is or is not conducted with or without a dispensing device and number of electronic ~~pull tab~~pull-tab devices for use;
- (4) The rental agreement is automatically terminated, at a lessor's option, if an organization's license is suspended for more than fourteen days or revoked;
- (5) An oncall, temporary or permanent employee, except a bar employee defined by subsection 3 of section 99-01.3-02-01 will not, directly or indirectly, conduct games at the site as an organization employee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed;
- (6) ~~A raffle drawing will or will not be conducted at the site;~~
- ~~(7) Prize boards involving a dispensing device will or will not be conducted at the site;~~
- ~~(8) The lessor agrees no game will be directly operated as part of the lessor's business;~~
- ~~(9)~~(7) The lessor agrees not to interfere with or attempt to influence the lessee's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds;
- ~~(10)~~(8) The lessor agrees not to loan money to, provide gaming equipment to, or count drop box cash for the lessee; and
- ~~(14)~~(9) The lessor agrees any advertising by the lessor that includes charitable gaming must include the charitable gaming organization's name. An abbreviation of the organization's name may be used.

- 3. Rent must be a fixed dollar amount per month.

- a. A participatory or graduated rate arrangement based on gross proceeds or adjusted gross proceeds is prohibited.
 - b. If bingo is the primary game or if a site is leased by an organization that has the alcoholic beverage license for that site, the monthly rent must be reasonable. Factors include time usage, floor space, local prevailing rates, and available sites and services. An organization may pay seasonal expenses, such as snow removal, air-conditioning, and heating, to a vendor.
 - c. If bingo is not the primary game, the maximum monthly rent must be according to subsection 5 of North Dakota Century Code section 53-06.1-11. Special considerations are:
 - (1) If two or more organizations conduct twenty-one or paddlewheels, or both, involving a table and pull tabs for less than a month at a temporary site which is a public or private premise, or if two or more organizations are issued site authorizations to conduct games at a site on different days of the week, the maximum monthly rent, in the aggregate, may not exceed the limit set by subsection 5 of North Dakota Century Code section 53-06.1-11; and
 - (2) If a raffle, calcutta, sports pool, or poker is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.
 - d. Except for applying subsection 3 or 4 of section 99-01.3-03-04, and additional rent paid to a lessor for simulcast racing, an organization or employee may not pay any additional rent or expense, from any source, or for any other purpose, including office or storage space, snow removal, maintenance or cleaning fees, equipment, furnishings, entertainment, or utilities. Except for a leased site at which bingo is the primary game conducted, an organization may not pay for any capital or leasehold improvements or remodeling.
4. If there is a change in the monthly rent or any other material change to a rental agreement, the agreement must be amended and a copy received by the attorney general before its effective date.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-07.4

99-01.3-02-08. Currency of play, credit play, and borrowing from gaming funds.

1. Play of a game must be in United States currency. Play of a game must be on a cash basis. An organization may, by policy, accept checks and allow the use of debit cards. No credit may be extended to a player; ~~including payment.~~ [Payment](#) by credit card [may be accepted only for online raffle ticket sales](#). The consideration to play a game must be paid before play. An employee may not loan money to a player, accept a postdated check, allow a player to alter a check, permit a player to establish an account by depositing cash for making periodic withdrawals, or any similar practice. An organization may allow a player to buy back a check with cash and may return a player's check to the player as part of a prize payout but may not unnecessarily delay the bank deposit of that check.
2. An employee may not borrow gaming funds as a personal loan or substitute a personal check for gaming funds.

History: Effective May 1, 1998; amended effective July 1, 2000; October 1, 2006; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-02-09. Persons restricted from playing games.

1. An employee who is a shift or gaming manager may not play any game at any of the organization's sites. An employee who services a pull tab or prize board dispensing device, ~~or electronic pull tab device~~ may not play the device at that site.
2. An employee may not play any game while on duty, except a volunteer may participate in a raffle. For the game of bingo, if an organization's total gross proceeds for the previous fiscal year, for which tax returns were filed, was twenty-five thousand dollars or less, a volunteer who is not a bingo caller, shift manager, or gaming manager, may also play bingo while on duty.
3. An employee may not play pull tabs or prize boards, including through a dispensing device, ~~electronic pull tab device~~, tip board, club special, or punchboard until after three hours of active play have occurred since the employee went off duty at that site. "Active" play means that a game has been available for play. A player may not provide and an employee may not accept an unopened pull tab as a tip.
4. An employee may play twenty-one while off duty at organization sites only on tables that have the activity recorded by video surveillance.
5. A bar employee may not play pull tabs or prize boards, which involve a dispensing device, or electronic pull tabs while on duty. A bar employee may play pull tabs or prize boards, involving a dispensing device, or electronic pull tabs while off duty after three hours of active play have occurred since the bar employee went off duty at that site, unless otherwise prohibited by subdivision c of subsection 3 of section 99-01.3-02-05.
6. An employee or bar employee taking a temporary break is still considered on duty.
7. If an organization allows an employee to play games at its site, it shall post or make available to players the policy at that site.
8. A shift manager may not permit and an employee may not allow an employee's common household member, spouse, child, parent, brother, or sister, at a site, to:
 - a. Play pull tabs, except electronic pull tabs, of a game while the employee is on duty as a jar operator for that game, regardless if the employee takes a temporary break or rotates to conduct another game. This rule also applies to an employee who conducts pull tab or prize board dispensing device activity; or
 - b. Play twenty-one or paddlewheels at a table when the employee is dealing or is a wheel operator at that table.
9. An organization may prohibit a person from playing games at a site.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-02-11. Outside service provider restrictions.

Only an organization member, employee, including an employee of a temporary employment agency, or member of an auxiliary to an organization may manage, control, conduct games, or have

sole direct access to gaming assets. An organization may have an outside service provider, including another organization, provide specific gaming-related services. All accounting records and played games shall be stored by the organization. The organization shall ensure that the outside service provider complies with the gaming law and rules and may allow assistance with the following:

1. Perform audit services, including auditing closed games and daily activity, do interim audits of games, verify bank deposits, and reconcile inventory of gaming equipment and cash banks;
2. Perform accounting and bookkeeping services, including recording receipts and disbursements, processing payroll and payroll reports, reconcile bank statements, write checks, and prepare budgets, financial statements, and tax returns. However, an outside service provider may not have signatory authority of a bank account;
3. Access and review recorded video;
4. Take a locked bank bag or locked drop box to a financial institution provided the ~~independent contractor~~outside service provider has no access key; and
5. An outside service provider that is a security company, security agency, accounting firm, or financial institution may count drop box cash.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2004; October 1, 2006; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

CHAPTER 99-01.3-03

99-01.3-03-03. Trust account.

1. An organization shall maintain all trust accounts at financial institutions located in North Dakota. If an organization only conducts a calcutta, raffle, sports pool, paddlewheel described by subsection 1 of section 99-01.3-11-01, or poker or a combination of these games, or is involved in conducting no more than two events during a fiscal year and each event lasts no more than fourteen calendar days, an organization is not required to maintain a separate trust account and may use the gaming account for the disbursement of eligible uses. Trust accounts are used only to disburse net proceeds to eligible uses and must receive only funds from a gaming account, except to reimburse the account as required by section 99-01.3-03-05 and as provided by subsections 5 and 13 of section 99-01.3-14-01. Interest earned and service fees incurred by trust checking and savings accounts must be reported as adjustments to the trust account on a tax return. A transfer of net proceeds to another trust account or to a closely related organization is not a disbursement of net proceeds. Net proceeds cannot be pledged as collateral for any loan.
2. An organization shall disburse net proceeds within a reasonable time period.
3. An organization may not transfer funds from a trust account to any other bank account, except for transferring funds to another trust account or to reimburse its general account for compensation that qualifies as an eligible use. A reimbursement must be documented by a supporting schedule. If a disbursement of net proceeds is for an expense item that includes both nongaming (an eligible use) and gaming functions, only the nongaming eligible use portion can be paid with trust account money. The organization shall maintain complete, accurate, and current documentation detailing the proration of the expense between nongaming and gaming. A disbursement must be payable directly to the ultimate use or recipient. However, an organization may make a payment directly to a credit card company for charges on a credit card provided that an organization can identify purchases that qualify as an eligible use from other purchases. A payment may be made by electronic transfer.
4. If an organization invests net proceeds in a certificate of deposit, bond, stock, mutual fund, or other marketable securities, all income earned, including interest, dividends, and capital gains, must be reported each quarter as a positive adjustment on a tax return and be disbursed to an eligible use. If the net effect of the investment in marketable securities results in an actual loss, the organization may not deduct the loss on a tax return. A service fee is an adjustment to the account's balance.
5. ~~If an organization invests net proceeds in marketable securities with the intent to maintain the investment for a period of three years or greater and no change is made to the original investment amount, either additions to or withdrawals from, the organization may choose to account for and report any earned income, including capital gains, on a tax return after each three-year period instead of each quarter. If additions are made to or withdrawals are made from the original investment amount before a three-year period ends, the organization shall account for and report any earned income, including capital gains, on the tax return for the quarter in which the change was made to the original investment amount. If the net effect of the investment results in an actual loss, the organization may not deduct the loss on the tax return. Service fees incurred during the reporting period are an adjustment to the account's balance.~~
- ~~6.~~ For reporting purposes, an organization may elect to report the gain in market value of the accounts outlined in subsection 4 ~~and 5~~. Adjustments can be made for decreases in market value; however, such decreases cannot reduce the account's value below its adjusted basis. Electing to report securities at market value must be consistently applied each quarter.

- ~~7. The organization shall submit a copy of the marketable securities statements for each quarter with its tax return and shall submit a copy of its annual 1099 received for all marketable securities accounts each year with the tax return filed for the quarter ending March thirty-first.~~

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-03-04. Restrictions and requirements.

1. An organization is allowed an expense limit according to subsection 2 of North Dakota Century Code section 53-06.1-11. The allowable expense amount may be used for any purpose that does not violate the gaming law or rules.
2. An organization may not base an employee's compensation on a participatory percentage of gross proceeds, adjusted gross proceeds, or net proceeds. An organization may pay a fixed bonus through an incentive program.
3. An organization may not pay or reimburse, nor may a lessor accept a payment or reimbursement from an organization, for any media advertising done by the lessor or any other person that is related to games at a site unless the organization's share of this expense is prorated to the benefit the organization receives and the media advertising is voluntary by the organization.
4. An organization may not pay or reimburse a lessor or share in the cost, nor may a lessor accept a payment, reimbursement, or sharing of the cost from an organization, of any sign advertising related to games at a site unless the sign is not owned by the lessor. If a lessor rents an advertising sign from a vendor, the organization's share of this expense must be prorated to the benefit the organization receives and the sign advertising is voluntary to the organization.
5. A player's uncollectible check is an expense. If an organization establishes a policy to reduce a player's cash prize by the amount of the player's uncollectible check and award the player the difference, if any, the organization shall post or make available to players that policy.
6. If a door prize is awarded as a promotion of games, the cost of the door prize is an expense.
7. A net cash short is an expense and a net cash long is other income for a quarter.
8. Only an unopened pull tab, including unplayed electronic pull tabs, unopened set of stapled jar tickets, or set of banded jar tickets that has the band intact may be accounted for as unsold or defective when a game is reported on a tax return. An organization shall account for any single unsold or defective jar ticket at a proportional selling price of a stapled set of jar tickets.
9. If foreign currency is exchanged into United States currency, any loss is an expense.
10. The attorney general shall determine whether a theft of an organization's gaming funds can be deducted from gross proceeds and adjusted gross proceeds on its tax return and notify the organization. The attorney general shall consider whether the organization:
 - a. Immediately reported the theft to a local law enforcement agency and the attorney general;
 - b. Has documentation that substantiates the theft amount;
 - c. Had physical security of the funds;

d. Has an adequate system of internal control; and

e. Incurred an identifiable theft.

11. If an organization rents out gaming equipment, the income is nongaming income.

12. All accounting records must be completed and initialed or signed with permanent ink. All signatures and initials on accounting records attesting to the information recorded must be handwritten and may not be digital images or computer generated. The use of correction fluid or correction tape to make changes to accounting records is prohibited. Changes must be made with a single strikethrough of the original amount, writing the correct amount, and initialed by the individual making the change. ~~An organization shall maintain a register of all individuals who initial or sign a record or report, including independent contractors who provide auditing, accounting, and bookkeeping services. Any financial institution employee who provides drop box cash count services is not required to be included on the register; however, the financial institution employee shall legibly sign their full name on the daily report when providing drop box cash count services. The register must include each individual's name and the initials or signature as the individual normally writes them on a record or report. The initials or signature of an individual on a record or report attests that to the individual's best knowledge the information is true and correct.~~

13. An organization shall maintain a register of all individuals who initial or sign a record or report, including outside service providers who provide auditing, accounting, and bookkeeping services. Any financial institution or bar employee who provides drop box cash count services is not required to be included on the register; however, the financial institution or bar employee shall legibly sign their full name on the daily report when providing drop box cash count services. The register must include each individual's name and the initials or signature as the individual normally writes them on a record or report. The initials or signature of an individual on a record or report attests that to the individual's best knowledge the information is true and correct.

14. The fees charged to players to enter a twenty-one tournament and the prizes awarded, must be reported as other income on a tax return.

~~44.~~15. For computing prizes on a tax return, a merchandise prize and a gift certificate are valued at an organization's actual cost, including sales tax, and a donated prize is valued at zero.

~~45.~~16. An organization shall own and possess, have a contract to acquire, or be able to obtain a prize being offered for a game. A winning player may not be required to first pay for or buy something to receive a prize. However, an organization does not need to register or title an automobile or similar item.

~~46.~~17. If a prize winner is ineligible to receive a merchandise prize, the organization may convert the prize to a cash prize or other merchandise prize of at least equal value, provided that the conversion of a raffle prize does not exceed the limits outlined in North Dakota Century Code section 53-06.1-10.1.

~~47.~~18. If a gaming prize is not claimed by the winning player and has previously been reported on a tax return, an organization shall amend the applicable tax returns to account for the unredeemed prize.

~~48.~~19. When a deal of pull tabs, club special, tip board, seal board, raffle board, prize board, sports-pool board, calcutta board, or a series of paddlewheel ticket cards is placed in play, an employee shall compare the game serial number on the pull tab, board, or card to the serial number on the state gaming stamp. If the two serial numbers are different, an employee shall immediately notify the distributor.

~~19.20.~~ If an organization pays a fee to an insurance company to insure a contingency cash or merchandise prize for bingo or a raffle, the fee is an expense. If the insurance company pays or provides a prize to a winning player, it is not reported as a prize on a tax return.

~~20.~~ If an organization conducts twenty-one, it may pay monthly rent for more than one table provided that each additional table is used at least thirteen times a quarter. This level of activity is based on a site's historical experience, or seasonal activity, for each of the previous four quarters, regardless of which organization conducted twenty-one at the site. For a new site or a site that has been completely remodeled in appearance and function, the level of activity must be reviewed and reestablished after the first full quarter. If an additional table is used at least thirteen times in at least one but not all of the previous four quarters, the allowable monthly rent for that table must be prorated over all the active months of the licensing year. For example, if a second table was used at least thirteen times in only two of the previous four quarters, the additional monthly rent for the second table would be a maximum of two hundred dollars per month (or three hundred dollars per month if a wager greater than five dollars is accepted on the table) multiplied by six months (totaling one thousand two hundred dollars) and prorated to one hundred dollars per month for the licensing year.

21. If an organization temporarily releases its site authorization to allow another organization to conduct gaming at a site, the primary site holder shall provide the temporary organization with a signed statement of site release, include the duration which it is valid, and provide a copy to the attorney general's office at least fourteen days prior to the site release.

22. If an organization does not intend to reapply for a license for the next fiscal year, its license is revoked or suspended for a period of more than six months, or its license application is denied, and it has net proceeds that are not disbursed, the organization shall file an action plan with the attorney general. The plan must be filed within thirty days of the expiration of the license or when the license is relinquished, revoked, suspended, or the license application is denied, and include a planned timetable for disbursing all the net proceeds and anticipated uses.

If the action plan is not timely filed, net proceeds must be disbursed within ninety days of the expiration of the license or when the license is relinquished, revoked, suspended, or the license application is denied. The disbursement must be reported to the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-11

99-01.3-03-06. Gross proceeds, IOUs, documenting cash and chip banks.

1. Gross proceeds for a game must be separately maintained while the game is conducted. An organization shall use a separate cash bank for each game. However, for electronic ~~pull-tab~~[pull-tab](#) device activity, the organization shall use one cash bank for all electronic ~~pull-tab~~[pull-tab](#) games conducted at the site by the same manufacturer. The cash banks for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined and the cash banks for ~~pull-tab~~[pull-tab](#) games at a site may be combined, if approved by the attorney general. If an employee needs to establish or replenish a cash bank by withdrawing funds from the gaming account, the employee shall execute a withdrawal by check or other withdrawal method and reference the [site](#), specific game's name, other game type, or the combined cash bank. If a cash bank needs replenishment and another specific game or other game type's cash bank, cash reserve bank, or other funds from nongaming sources are used, an IOU form must be used to record the loan and payback. An IOU form must include:

- a. The source and destination of the funds;
 - b. For a club special, prize board, tip board, seal board, raffle board, sports-pool board, series of paddlewheel ticket cards, and punchboard, the game's gaming stamp number;
 - c. Amount and date of loan and repayment; and
 - d. Initials of a ~~cash bank~~-cashier or an employee for each transaction.
2. An organization shall document each bingo session's and each game's daily starting and ending cash on hand, including a cash reserve bank. Unless there is only one employee on duty when a site opens or closes, two persons shall participate in the cash count in the presence of each other. After completing and documenting the cash count, both persons shall initial the record.
 3. An organization shall document the daily starting and ending chip banks for casino and betting chips, including on the date of a poker occasion, an organization's no-value poker chips. The chip banks for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined. Unless there is only one employee on duty when a site opens or closes, two persons shall participate in the count of the chips in the presence of each other and record the count by denomination of chip or total quantity of no-value chips. After completing and documenting the chip count, both persons shall initial the record.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2012; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-03-08. Record of win.

1. An employee shall prepare a record of win if a player wins a last sale prize, a seal prize, a cash prize greater than five hundred dollars, a merchandise prize that has a retail price exceeding five hundred dollars, or a donated merchandise prize with a fair market value exceeding five hundred dollars, or wins a cash prize but receives a partial payout of the prize in cash and the remainder by check. If a pull tab has two or more winning prize patterns, the requirement is based on the value of each prize pattern. A record of win must be completed for the total prize even if a player splits the prize with another person. The record may be a check drawn from the gaming account, a ~~numbered~~-receipt, or the flare of a sports-pool board, calcutta board, club special, tip board, prize board, punchboard, seal board, raffle board, or winning bingo card. A bar employee shall print this information on a receipt or an employee shall print this information on a check, receipt, flare, or card unless it is already provided:
 - a. Name of the site;
 - b. Game type and, by game type:
 - (1) Bingo - Date of the session, game number, cash prize amount or description of a merchandise prize and retail price, and date of prize payout if different from the date of the session.
 - (2) Raffles - Date of the drawing, winning ticket number, gaming stamp number (if applicable), cash prize amount or description of a merchandise prize and retail price, and date of prize payout if different from the date of the drawing.
 - (3) Pull tabs and prize boards, including a dispensing device, punchboards, club special, tip board, and seal board - Name of the game, cash prize amount or description of a merchandise prize and retail price, date of activity, and gaming

stamp number. For a game with a last sale prize or a seal prize, the gaming stamp number must correspond with the respective deal's flare.

- (4) Sports pools - Date of the event, cash prize amount, date of prize payout, and gaming stamp number.
 - (5) Twenty-one or poker tournament - Date of the tournament, cash prize amount, or for twenty-one tournaments only, description of a merchandise prize and retail price.
 - (6) Calcuttas - Date of the event, cash prize amount, date of prize payout, and gaming stamp number;
- c. A player's full name and address:
- (1) If the player is present but not personally known by a bar employee or an employee, this information must be recorded from a pictured driver's license or tribal, government, or military identification;
 - (2) If the player is present but does not have one of these pictured identifications, a bar employee or an employee shall record the player's full name from another form of identification or mail the prize to the player; or
 - (3) If the player is not present, verification of this information is not required and the prize must be mailed; and
- d. Initial of a bar employee or an employee.
2. After a record of win is completed at a site, a player shall sign and date it. However, this rule does not apply to a prize mailed to a player.
 3. Unless a prize is for a last sale prize feature, a bar employee or an employee shall print, in ink, the check or receipt number on a pull tab or punchboard punch.
 4. A player who has actually won a prize shall claim the prize. A bar employee or employee may not falsify or permit a player to falsify a record of win or enable a player to conspire with another person to have the other person claim a prize. If a bar employee or employee determines that a player has falsified or attempted to falsify a record of win before the prize payout, the bar employee or employee shall deny the player the prize and notify the attorney general and local law enforcement agency.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-11

99-01.3-03-09. Inventory records of games, paper bingo cards, tickets, cash banks, and chips and reconciliation.

1. An organization shall maintain master and site inventory records of all deals and games that have a state gaming stamp affixed to their flares. The master records must include the sales invoice number, date received, name of game, dates of issuance to and received from a site, site name, date deal was placed, date game (that the deal was played as part of) was closed, and quarter the deal was reported on the tax return, by gaming stamp number. The site records must include the gaming stamp number, date received, date placed, and date game (that the deal was played as part of) was closed, by site and name of game. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. Annually an organization shall reconcile its inventory records of all deals and games

that have a state gaming stamp affixed to their flares that are recorded as being in play and in inventory as unplayed to the items that are actually in play and in inventory. This includes all games and deals that have not been reported on a tax return. A person who does not have sole access, shall count these items that are actually in play and in inventory, compare this count to the inventory records, and resolve any difference.

~~2. An organization shall maintain inventory records for all electronic pull tab deals played or in play for an electronic pull tab game. The records must be reportable by site and game and include, name of game, state gaming stamp number, game serial number, cost per play, ticket count, ideal gross proceeds, ideal prizes, ideal adjusted gross proceeds, date placed, and date game (that the deal was played as part of) was closed.~~

~~3.~~ An organization shall maintain master and site inventory records of paper bingo cards. The master records must include for each primary color and type of card, the sales invoice number, date received, number of cards bought, serial number ~~(optional)~~, dates of issuance to a site, site name, and quantity of cards issued to the site, or include information prescribed by a method approved by the attorney general. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. The site records for each series must include site name, primary color and type of card, serial number ~~(optional)~~, quantity received, date received, and quantity issued and returned for each session, or include information prescribed by a method approved by the attorney general. Annually an organization shall reconcile its inventory records of paper bingo cards that are recorded as being in inventory to the cards that are actually in inventory. A person who does not have sole access, shall count these items that are actually in inventory, compare this count to the inventory records, and resolve any difference.

~~4.3.~~ An organization shall maintain master and site inventory records of rolls of tickets. The master records must include for each ticket roll the color of the roll, date received, beginning ticket number, ending ticket number, number of tickets bought, date of issuance to a site, and site name, or include information prescribed by a method approved by the attorney general. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. The site records must include site name, color of roll, beginning ticket number, ending ticket number, quantity received, date received, and quantity issued and returned for each session or event, or include information prescribed by a method approved by the attorney general. Annually an organization shall reconcile its inventory of tickets. This reconciliation must include verification of the starting ticket number and total number of remaining tickets that are recorded as being at the home office and site to the tickets that are actually on hand. A person who does not have sole access, shall count the tickets at the home office and site, compare this count to the inventory records, and resolve any difference.

~~5.4.~~ An organization shall maintain a master record of ideal cash bank amounts and account for permanent increases or decreases. For each cash bank, the record must include the site, game type, game identifier, and amount. When a cash bank is started or when the ideal amount is permanently increased or decreased, the date, check number, amount, source or destination of the funds, and updated ideal cash bank amount must be recorded. Annually an organization shall reconcile its master cash bank records to the actual cash banks. A person who does not have sole access, shall count the cash banks, compare the count to the current ideal cash bank amount recorded on the record, and resolve any difference.

~~6.5.~~ An organization shall maintain casino and betting chip master and site inventory records. The records must include the dates chips are acquired, transferred to, and received from a site and running totals, by value of chip. Annually an organization shall reconcile its inventory of chips that are recorded as being at the home office and site to the chips that are actually in inventory. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. A person who does not have sole access, shall count the

chips in inventory at the home office and site, compare this count to the inventory records, and resolve any difference.

- 7-6. The count and reconciliation must be done by a person who does not have sole access to deals, games, paper bingo cards, rolls of tickets, cash banks (and who does not have sole signatory authority of the gaming account), or chips. It must be documented, including the name and title of the person who does the count and reconciliation, date and procedure performed, result, corrective action taken, and initials of that person.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-03-10. Bank deposit and audit.

1. The cash profit, less a documented increase or plus the decrease in the starting cash on hand for the next gaming activity, plus cash and merchandise prizes paid by check and cost of coins for a prize board, must be deposited in the gaming account by the third banking day following the day of a bingo session or electronic quick shot bingo session; club special, prize board, tip board, seal board, or punchboard is removed from play; sports-pool game; calcutta event; raffle board event, poker occasion; day's or interim period's pull tab and prize board, and twenty-one or paddlewheel activity. However, the receipts for a raffle, calendar or master sports-pool board, or paddlewheel described by subsection 1 of section 99-01.3-11-01 must be deposited in the gaming account by the third banking day following receipt of the cash by the person responsible for the activity.
2. For a day's pull tab activity, bingo session, electronic quick shot bingo session, raffle drawing, poker occasion, twenty-one and paddlewheel activity, and interim period's ~~pull tab or prize boards~~ [pull-tab](#) activity involving a dispensing device, a deposit slip must reference a site, name of the game, game type, date of activity, and deposit amount. For an interim period deposit for electronic ~~pull tab~~ [pull-tab](#) activity, the deposit slip must reference a site, game type, date of activity, and deposit amount. The deposit amount for twenty-one and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined. For a club special, prize board, [prize board involving a dispensing device](#), tip board, seal board, punchboard, and series of paddlewheel ticket cards, a deposit slip must reference a site, ~~name of the game~~, game type, date removed from play or date of activity, deposit amount, and gaming stamp number. For a sports-pool board, raffle board, or calcutta board, a deposit slip must reference a site, date of the event or auction, deposit amount, and gaming stamp number. For all game types, an employee who prepares a deposit shall initial the bank deposit slip. If another employee makes the bank deposit and has access to the cash, the employee shall also initial the bank deposit slip.
3. If a deposit slip is prepared for more than one game or game type, the deposit slip or supporting schedule must include the information required by subsection 2 for each game or game type. A supporting schedule must reconcile to a validated bank deposit receipt.
4. For a bank deposit, a person shall record the amount to be deposited on the game's accounting record and retain a copy of the bank deposit slip and any supporting schedule. This person shall forward the accounting record, copy of the bank deposit slip, and any supporting schedule to a bookkeeper. A second person shall take custody of the bank deposit funds and the original of the bank deposit slip and take them to a financial institution or arrange for the funds to be deposited. If, before the bank deposit is made, the custody of bank deposit funds is transferred from a person to another person, face-to-face, and the cash is accessible to be counted, both persons shall participate in a count of the cash in the presence of each other and resolve any difference. After completing and documenting the cash count,

both persons shall initial and date the original of the bank deposit slip. The person who makes the bank deposit shall forward the validated bank deposit receipt to a bookkeeper. A validated bank deposit receipt, copy of the bank deposit slip, and any supporting schedule must be included with the accounting records. An organization shall comply with this rule unless it uses another bank deposit procedure which has proper accounting control.

5. If an employee prepares or has custody of a bank deposit which is not scheduled to be immediately deposited, the employee shall safeguard the funds.
6. An employee who did not have access to the cash to be deposited shall, within a reasonable time, verify that the amount recorded on a daily or interim accounting record to be deposited was actually deposited according to a bank statement. The employee shall document the verification by initialing the accounting record and dating it. If more than one deposit amount is recorded on an accounting record, the employee shall initial the record for each verified deposit amount and date the record.
7. A closed game or daily activity must be audited, within a reasonable time, by a person who did not conduct the game, have sole access to the games in play, and who did not have sole access to the total receipts or cash profit for the game's or day's activity. This person may not have sole signatory authority of the gaming account or sole electronic access to the gaming account other than to view account information and may not make electronic deposits, withdrawals, or transfers into or out of the account. This person may not audit a closed game or daily activity that was conducted by a common household member, spouse, child, parent, brother, or sister of the audit person. A drop box cash count team member may not be the person responsible for auditing the twenty-one or paddlewheel with a table activity. A person who audits a closed game or daily activity shall verify the number and value of unsold chances, gross proceeds, number and value of prizes, adjusted gross proceeds, and cash profit. If the audit reveals an irregularity, the person shall notify the appropriate organization representative.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-04

99-01.3-04-02. Equipment.

An organization shall use this equipment:

1. A device from which balls are withdrawn or a certified and approved random number generator. If a random number generator is not used, a set of either seventy-five or ninety balls bearing the letters and numbers corresponding to the bingo cards in play. The balls must be stored in a safe storage place when not in use and be available for inspection by a player before a session begins. The balls must be equal size, weight, shape, and balance and must be in a receptacle before each game begins. A flashboard is optional.
2. Hard cards and paper cards, including paper cards that have two numbers in a square or enable a player to select and print numbers on a blank card, may be used. A blank card may be used if:
 - a. A card is a two-part carbonless card with a control number and five columns of numbers;
 - b. A player shall legibly print in ink one number in each blank square. A middle square, if any, may be a free space. The numbers cannot be repeated on a card and they must correspond with the letters and numbers of the bingo balls;
 - c. After a card is completed, a player shall provide an employee with the card before the start of the game. An employee shall ensure that the numbers are legible, validate the original and duplicate parts of a card, retain the original part, and return the duplicate part to the player; and
 - d. An employee shall verify a winning player's card and match the card's original part to the duplicate part. A card must be voided if it is illegible or altered.
3. Before conducting a bingo session, an employee shall test the equipment and ensure it is working properly.
4. An organization may not separate a collated set of paper bingo cards except to apply subsection 10 of section 99-01.3-04-03 or cut up a paper bingo card that has two or more faces on it to separately sell the cards or faces.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-04-03. Conduct and play.

1. The following rules, information, and policies must be posted or made available to players in the area where bingo activity is conducted. If made available to players, the rules, information, and policies must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
 - a. A person may not separate a paper card when there are two or more faces on a sheet;
 - b. A person under eighteen years of age may not play bingo unless an individual, eighteen years of age or older, accompanies a minor when buying a bingo card or package and throughout the session. The adult may not be an employee on duty. This rule does not apply if a person under twenty-one years of age is not allowed on the site or an organization has a permit or prize structure that does not exceed the limit of a permit;

- c. If an organization does not restrict duplicate paper cards from being in play for a game, it shall post or make available that information to all players before their purchase of cards or packages;
- d. The actual letter and number on a ball drawn or freely awarded is official;
- e. If a person knowingly uses a fraudulent scheme or technique to cheat or skim involving bingo, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
- f. A bingo card is void if it is taken outside the gaming area;
- g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited;
- h. If a player receives a partial bingo cash prize the day of the bingo session, the remaining bingo cash prize must be made available or postmarked to the winning player within seven calendar days;
- i. A policy of when an organization may cancel a bingo session;
- ~~i.j.~~ A policy that if a player has more than one bingo on one card or on two or more cards for a game, whether it is considered as one bingo or more than one bingo for splitting a prize with another winning player;
- ~~j.k.~~ A policy that a bingo is timely called by a player when, on the last number called, the player calls the word "bingo" or other required word before the bingo caller announces the whole letter and number of the next ball to be called, or other policy;
- ~~k.l.~~ A policy on sharing a prize by two or more winning players on identically or differently priced cards. A policy must include the following except that an organization may award a minimum prize:
 - (1) If a prize is cash and all winning players bingo on identically priced cards, the cash prize must be divided equally. An organization may round fractional dollars.
 - (2) If a prize is cash and the winning players bingo on differently priced cards, an organization shall award each winning player:
 - (a) The designated prize;
 - (b) An equal share of the designated prize; or
 - (c) A proportional part of the designated prize for that card or any other fair method. The proportional part is the ratio that each winning player is in relation to the total number of winning players. To illustrate, if three players bingo on differently priced cards, each player is to be awarded one-third of the designated prize for that player's card.
 - (3) If a prize is merchandise and it cannot be divided, an organization shall do one of these options which must be disclosed in the bingo program or promotional material or announced before the bingo session:
 - (a) Award each winning player a substitute merchandise prize, which must be of equal value, and the total value of all substitute merchandise prizes awarded must at least total the retail price of the original prize. A merchandise prize may be redeemable or convertible into cash at an organization's option;

- (b) Award a certain cash split amount that totals the retail price of the original prize; or
 - (c) Conduct a continuous or separate playoff game between the winning players;
- ~~l.m.~~ A policy that a player may or may not use a bingo card marking device and play additional paper bingo cards at the same time; and
 - ~~m.n.~~ A policy that a player may or may not share the player's bingo package with another player.
- 2. An organization shall make these announcements:
 - a. Before each session, the policies on:
 - (1) When a bingo is timely called by a player;
 - (2) Whether the bingo caller, floorworker, or both must hear and acknowledge a player who calls the word "bingo" or other required word; and
 - (3) That a player is responsible for ensuring that the bingo caller, floorworker, or both hear and acknowledge the player; and
 - b. Before each game, the game's winning bingo pattern.
- 3. An employee may only assist a disabled player in playing a bingo card or assist a player in how to use a bingo card marking device. A legally blind or disabled player may use the player's personal braille or special card when an organization does not provide such a card. An organization may inspect and reject the card.
- 4. An employee may not sell or award a gift certificate as a prize unless:
 - a. A certificate is accounted for when it is sold or awarded. An employee shall issue a certificate to the purchaser or player and retain a copy or stub of the certificate with the daily records and record the certificate on a register to document the sale. An organization shall recognize a sale of a certificate as gross proceeds on the tax return for the quarter in which it was sold. A certificate awarded as a prize has no cash value. A certificate must be used to buy only a bingo card or package;
 - b. A register is maintained which accounts for all certificates sold or awarded at a site. A register must include, for each certificate, a consecutive control number, selling price (if applicable), dates issued and redeemed, sites at which it is issued and redeemed, and initials of the employees who issue and redeem the certificate; and
 - c. A redeemed certificate is signed by a player and retained by an organization with the daily accounting records. A player is issued a bingo card or package at the site when the certificate is redeemed.
- 5. If an organization changes a publicly announced bingo program for a session in which a potential prize or the number of games is reduced, an employee shall notify a player of the change before the player buys a card.
- 6. If an organization sells two or more differently priced cards or packages for a game, it shall use a different type, color, serial number, or a distinctive identifiable feature for each differently priced card or package. An organization may not use the same serial numbered paper bingo cards for more than one game or group of games during a bingo session, unless the face of a card is a different color or a paper card tracking number is used.

7. If an organization accepts a discount coupon, the redeemed coupon must contain the dollar value or percentage discount and be signed by a player. An employee shall write the value of the bingo card or package purchased on the face of the coupon unless the value is already stated, record the date on the coupon or on a group of coupons for a session, and retain the coupon with the daily records. The value of a player's one or more coupons must be less than the value of the card or package bought.
8. If an organization accepts a donated item in exchange for a discount, an employee shall account for the discount on a register as part of the daily records. A discount must be less than the value of the card or package bought. A register must contain:
 - a. Bingo session and date of the session;
 - b. Amount of the discount;
 - c. Value of the bingo card or package bought;
 - d. Signature of the player;
 - e. Total amount of bingo card or package discounts for the session; and
 - f. Date and initials of the cashier.
9. A card or package must be bought on a site immediately before the start of a game or during a session. However, an organization may presell a card or package for a special session that involves a bingo prize or prizes that equal or exceed ten thousand dollars for the session provided the organization:
 - a. Uses a consecutively numbered two-part receipt to register a player who prepays. One part is issued to a player who shall redeem the receipt to receive the card or package. The second part is retained by the organization to account for the gross proceeds;
 - b. Separately accounts for the gross proceeds and reports it on a tax return for the quarter in which the game is conducted; and
 - c. Provides a card or package to the player before the start of the session that day.
10. No card may be sold for a game which is in progress or ended except for a bonanza bingo or a game that has all of its numbers predrawn. If a paper bingo card is included in a package for a game in progress or ended, the card must be withdrawn and destroyed. An employee may exchange a purchased package for another package if the employee accounts for all the cards of the first package and a session has not started.
11. An organization may allow a player to use a bingo card marking device provided by the organization that marks an electronic card image of a purchased card as follows:
 - a. A device cannot be reserved for a player unless a player is disabled. An organization shall provide each player an equal opportunity to use the available devices on a first-come, first-served basis. A device cannot be issued through a floorworker;
 - b. A device must be used only to play bingo cards at a site where the site system is located and the session is being conducted;
 - c. A device must be rented for a fixed amount, regardless of the price for a card or package or number of cards played through the device, or provided free to a player for the player's temporary use during the session. Rental fees charged to players for the use of devices is nongaming income;

- d. No player can use more than one device at a time during a session;
 - e. No player can play more than seventy-two single-faced cards per game on a device and cannot choose or reject cards;
 - f. An organization shall use paper bingo cards in the session that are of a series different than the cards downloaded in or played on the devices;
 - g. If a card or package may be used in a device and in paper form, it must be sold for the same price. An organization may sell a special card or package to a player for use only in a device. The organization may require a player to buy a minimum-priced card or package to use a device;
 - h. If a player rents a device while a game for that session is in progress, the player may not play that game and a cashier shall record on the player's receipt that the specific game number is void;
 - i. An organization may print a facsimile of a winning card and post it for players to inspect;
 - j. A player may use an input function key on a device or an organization may use a radio frequency signal or Wi-Fi transmission to mark each number as it is called. When a player inputs a number or an organization sends a radio frequency signal or Wi-Fi transmission, a device may automatically mark all the player's cards that contain that number;
 - k. If a player has a winning card, the player shall:
 - (1) Timely call bingo according to subdivision j of subsection 1 and it must be by a method other than through a device; and
 - (2) Provide the device with the winning card displayed to a floorworker to verify according to subsection 18;
 - l. If a player's call of a bingo is disputed or if the attorney general makes a request, an organization shall print the winning card stored on the site system;
 - m. An organization shall have at least one spare device available should a device in use malfunction. If a player's device malfunctions, the player may replace the device with a spare device. An organization shall restore the player's same cards from the site system;
 - n. For site systems in which electronic bingo card images are downloaded to a bingo card marking device, if a player exchanges a device for another device, the original transaction of the first device must be voided and the transaction involving the second device must be recorded as a sale;
 - o. An organization may perform routine maintenance on a site system and bingo card marking device; and
 - p. An organization shall back up all of a site system's accounting information for a session on a separate electronic media file prior to the start of the next business day and retain the backup file for three years from the end of the quarter in which the activity was reported on a tax return. The accounting information must comply with subsection 1 of section 99-01.3-16-09.1.
12. After the start of a session, an organization may not refund the purchase price of a card or package unless a site incurs an electrical power loss, there is inclement weather, an

organization experiences an extraordinary incident, a session is canceled, or a player has an emergency.

13. If an organization sells hard cards before each game, during the game an employee shall count the number of hard cards played by all the players to the number recorded as sold. If the comparison reveals an irregularity, the gaming manager shall take corrective action.
14. An organization may not sell a bingo package that contains a variable number of cards based on each player's ability to play. Each separately priced package must contain a standard number of cards.
15. If a game has an actual or potential prize valued at fifty dollars or greater or is a bonus game, an employee shall use an electronic bingo card verifier; record in writing the called numbers and the sequence in which they were drawn; or audio recording of the bingo caller calling the balls. When a player bingos, an employee shall retain the bingo card verifier record, the written record, or audio record, which includes the following and retain these records for six months:
 - a. Game number, winning pattern, color and type of card (number of faces on a sheet), type of package (regular, premium, super), winning series (card) number, and last number called; and
 - b. Cash register receipt number, if applicable.
16. A caller shall display the letter and number on the ball to players except for speedball bingo or when a random number generator is used. An employee shall announce the letters and numbers on the balls or displayed by a random number generator in their exact sequence; however, numbers freely awarded do not need to be announced. The caller is also not required to announce all letters and numbers for a game in which the pattern does not require the use of the selected letters or numbers. If a player calls bingo and the bingo is invalid, the next ball called must be in sequence of the balls drawn.
17. A player may bingo more than one time on the same card when an organization conducts continuation games of more than one pattern on the same card. An organization may also conduct bonus games where multiple winning patterns may be played on the same card ~~and where one or all of the prize patterns has a winner~~. At least one pattern must be awarded a prize by an organization for each sequence of bingo balls called and played on a card.
18. A winning card must be verified by an employee and one neutral player or person unless an electronic bingo card verifier is used and the display of an electronic bingo card verifier is shown to all players on a monitor. A floorworker may not access a verifier. For a winning card on a bingo card marking device, an employee shall compare the serial number of the device to the receipt for the cards played on that device.
19. An organization may offer a variety of prizes to a winning player who may choose a prize by random selection or chance. A player may win an additional prize by choosing the prize by random selection, by an organization drawing from previous winning players, or playing a game of skill if the player is not required to give anything of value. An organization shall disclose the potential prizes in the bingo program and notify a player of these prizes before the player chooses a prize, has the opportunity to win a prize, or plays a game of skill.
20. An organization may award, as a prize, cash, merchandise, merchandise gift certificate, or gift certificate that can be redeemed for a bingo card or package.
21. An organization may conduct a qualifying game whereby a player wins an opportunity to play in a special game.

22. An organization may award a bonus prize that is based on a factor incidental to a bingo program if it is disclosed in a program, calendar, or flyer, and announced before a session, and is recorded on a prize register. Factors may include a player bingoing on a certain color of card, combination of colored cards, last number called, particular face of a multifaced card, or winning a game on the player's birthday.
23. If a player bingos and an employee determines that the player is playing more bingo cards than were bought, the player's bingo is void.
24. Bonanza bingo and a game that has all of its numbers predrawn must be conducted as follows:
 - a. A caller shall initially call a certain quantity of balls. While a caller initially calls the bingo balls or before the caller calls the next continuous number, a player shall verify that the letter and number on the balls drawn are correctly displayed. A posted display must be used for the games, have restricted access, and reference that game;
 - b. A card must be sealed and unpeekable when it is sold;
 - c. An organization may sell or exchange cards throughout a session until sales are closed. If an organization exchanges cards, an employee shall, before the next continuous number is called, fully account for the floorworkers' sales of cards according to section 99-01.3-04-07. A floorworker may not turn in any exchanged card after the accounting is begun;
 - d. If a player bingos before the next continuous number is called, the player wins. Otherwise, an additional bingo ball is drawn until a player bingos. This rule does not apply to a game that has all of its numbers predrawn;
 - e. A game may not extend beyond a session;
 - f. If an organization permits a player to exchange a partially played card for a new card and pay a discounted or exchange price, an employee shall:
 - (1) Validate the date of the session on the card with a mechanical device or rubber stamp. A card validated for a session, but not sold, must be voided. The organization shall use a different color of card for each game conducted at a site during a day;
 - (2) Retain the exchanged cards as part of the daily records for six months;
 - (3) Record the validation date and card color used by session; and
 - (4) Reconcile the cards, accounting for:
 - (a) Number of cards taken from inventory which must be independently counted and verified by two employees who shall initial and date the verification;
 - (b) Number of cards sold;
 - (c) Number of cards exchanged, which must be separately maintained for each floorworker. The cards must be recounted by an employee who is not the floorworker. The employee who controls the floorworker sales report shall band each floorworker's exchanged cards separately, identify the banded group with the floorworker's name, session, and initial and date. A floorworker shall also initial the floorworker's banded group;

- (d) Number of cards returned to inventory and voided which must be independently counted and verified by two employees. Each person shall initial and date the verification; and
 - (e) Document any discrepancy and corrective action taken; and
- g. A voided card must be retained for six months.
25. If an employee determines, during or immediately after the play of a game and before a card is verified as a winning bingo, that a ball is missing, the employee shall void the game and offer the players a fair alternative.
 26. An organization shall receipt gross proceeds, including an additional amount paid by a player for a chance to win an extra prize in a special game, by a cash register, tickets, paper card count, paper card tracking number, or floorworker sales report, unless written approval is obtained from the attorney general for use of another receipting method. The receipting method must reference the primary color and type of cards, serial number-~~(optional)~~, number of cards or packages sold, discounts applied to each type of card or package sold, or reference other information approved by the attorney general.
 27. If packages are sold which consist of a multiple of cards, records must be maintained that document the number of and primary color and type of cards that are included as part of each package.
 28. For a progressive game that increases the number of bingo balls to be called or the prize amount, the organization shall maintain a written record that includes date of session, game number, number of bingo balls, prize amount increase, and accumulated prize amount.
 29. For a site where bingo is the primary game or a site that is leased by a licensed organization, the organization or any person may not pay bingo prizes in which the total bingo prizes exceed total bingo gross proceeds for two entire consecutive quarters. However, if bingo is the primary game at the site, a bingo prize that equals or exceeds ten thousand dollars is excluded from the calculation of total bingo prizes.
 30. An organization shall have a written bingo program for each session. However, if the program does not change each day or session, an organization may retain one program and record the dates on which it applied. A program must contain:
 - a. Name of a site and organization;
 - b. Date or dates of the sessions;
 - c. Game number, game description, color and type of card, and prize amount for each game;
 - d. Selling prices of the cards or packages;~~and~~
 - e. Bonus games and potential prize amounts that may or may not be awarded, if applicable; and
 - f. Rental fee charged for a bingo card marking device, if applicable.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.1

99-01.3-04-08. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For each session:
 - a. The gross proceeds for each type of sale or game. If a site system involving bingo card marking devices is used, records must include the summary report for the session according to subdivision c of subsection 1 of section 99-01.3-16-09.1;
 - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
 - c. Cash profit as defined in subdivision a of subsection ~~89~~ of section 99-01.3-02-01;
 - d. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sessions for a quarter must reconcile to the tax return;
 - e. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
 - f. Record of called bingo numbers according to subsection 15 of section 99-01.3-04-03;
 - g. Inventory records according to subsections ~~32~~ and ~~43~~ of section 99-01.3-03-09;
 - h. A copy of or reference to a bingo program according to subsection 30 of section 99-01.3-04-03;
 - i. For progressive games, a record according to subsection 28 of section 99-01.3-04-03;
 - j. All voided paper bingo cards, other voided sealed and unpeekable bingo cards, and exchanged bonanza bingo cards, which must be retained for six months;
 - k. Gift certificate register according to subdivision b of subsection 4 of section 99-01.3-04-03;
 - l. Redeemed gift certificates and discount coupons; and
 - m. Purchase invoice or receipt documenting the cost and description of a merchandise prize.
2. Ideal cash bank master records according to subsection ~~54~~ of section 99-01.3-03-09.
3. Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
4. The count and reconciliation of paper bingo cards, rolls of tickets, and cash banks according to subsections ~~3, 4, 5, and 72~~, 3, 4, and 6 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-04.1

99-01.3-04.1-03. Conduct and play.

1. Only one set of numbers may be drawn for a business day. The predrawn numbers for the current session must be posted at the site. The use of a flashboard is optional. Unless there is only one employee on duty, two persons shall verify and attest to the numbers drawn or selected, numbers posted, and numbers entered into the electronic quick shot bingo site operating system for the current session. When the bingo numbers have been drawn or selected, the numbers may not be changed. Players are not allowed to pick any numbers to match for an electronic quick shot bingo game or bonus feature. No electronic quick shot bingo session may extend beyond the end of a business day. After a session has been closed, the called bingo numbers must be cleared before the start of the next business day.
2. Players are responsible for safeguarding their receipt with the designated account number to track all deposits on an electronic quick shot bingo card-marking device. A player's receipt must be presented when redeeming prizes or cashing out credits.
3. If a player has a winning prize pattern, all prize winnings must be awarded to players in a separate winnings account on an electronic quick shot bingo card-marking device. Automatic transfer by the player of any winnings balance to the credit (deposit) balance on the device is prohibited. All payouts of winnings must be transacted by an organization employee.
4. A player shall not be required to forfeit any winnings or make an additional wager in order to receive a bonus game or feature.
5. The following rules, information, and policies must be posted or made available to players in the area where electronic quick shot bingo activity is conducted. If made available to players, the rules, information, and policies must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
 - a. A person under eighteen years of age may not play electronic quick shot bingo;
 - b. The actual letters and numbers predrawn by the organization are official;
 - c. If a person knowingly uses a fraudulent scheme or technique to cheat or skim involving electronic quick shot bingo, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
 - d. An electronic quick shot bingo card-marking device may not be taken outside of the gaming area;
 - e. An employee may only assist a player in how to use an electronic quick shot bingo card-marking device;
 - f. No player can use more than one electronic quick shot bingo card-marking device at a time during a session;
 - g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited;
 - h. A player may not sell the remaining credits on a device to another player;
 - i. A player shall present the player's receipt when redeeming prizes or cashing out credits;
 - j. A policy that if a player has more than one winning bingo pattern on a card, whether the highest prize pattern will be awarded or all winning prize patterns will be awarded;
 - k. A policy in the event that a player has lost the player's receipt;

- I. A policy when an organization may cancel a session due to power outage, electronic quick shot bingo site operating system being down, or any transmission problems; and
 - m. If applicable, a policy regarding use of an electronic quick shot bingo card-marking device and additional paper bingo cards at the same time.
6. An employee or floorworker shall use a point-of-sale device when adding additional credits (deposits) and redeeming winnings for additional credits (deposits) involving an electronic quick shot bingo card-marking device provided that all transactions are accounted for according to the manufacturing specifications in section 99-01.3-16-09.4.
7. An electronic quick shot bingo card-marking device cannot be reserved for a player. An organization shall provide each player an equal opportunity to use the available devices on a first-come, first-served basis.
8. An organization may pay a fixed rate per electronic quick shot bingo card-marking device or a fixed fee per bingo card sold. No payment for use of a device may be based on a percentage of the gross proceeds, adjusted gross proceeds, or net income earned.
9. A receipt must comply with subdivision i of subsection 12 of section 99-01.3-16-09.4.
10. A receipt for a void, refund, or similar item must be initialed by a supervisor or another employee who did not conduct the transaction if a supervisor is not available and retained with the daily records.
11. All prizes awarded must be cash.
12. No electronic quick shot bingo games may be played with a progressive prize unless authorized by the attorney general.
13. A separate cash bank must be used with electronic quick shot bingo at a site. All deposits must be separately identified from other game types, including other bingo games conducted at a site.
14. Unredeemed credits on an electronic quick shot bingo card-marking device are considered to be gross proceeds. Unclaimed prizes on the device are subtracted from total prizes won in calculating the adjusted gross proceeds.
15. An organization shall deactivate an employee password within forty-eight hours of that employee leaving employment. Passwords for employees of a site must be changed every six months.
16. No discount, gift certificates, or promotions are allowed unless authorized by the attorney general.
17. An organization shall back up all of an electronic quick shot bingo site operating system's accounting information for a session on a separate electronic media file prior to the start of the next business day and retain the backup file for three years from the end of the quarter in which the activity was reported on a tax return. The accounting information must comply with subsection 12 of section 99-01.3-16-09.4.

History: Effective July 1, 2012; amended effective April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-04.1-04. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For each session:
 - a. The electronic quick shot bingo site operating system involving a bingo card-marking device must include the summary report for the session according to subdivision j of subsection 12 of section 99-01.3-16-09.4;
 - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
 - c. Cash profit as defined in subdivision a of subsection ~~89~~ of section 99-01.3-02-01;
 - d. A summary of the total dollar value of credits sold, total dollar value of unplayed credits cashed out, gross proceeds, prizes won, unclaimed prizes, prizes paid, adjusted gross proceeds, cash profit, cash long and short, and bank deposit. The summaries of all sessions for a quarter must reconcile to the tax return;
 - e. Prize report according to subdivision l of subsection 12 of section 99-01.3-16-09.4;
 - f. Record of win according to section 99-01.3-03-08; and
 - g. Record of the balls or numbers predrawn, including bonus numbers and a record of numbers actually entered into the electronic quick shot bingo site operating system according to subdivision m of subsection 12 of section 99-01.3-16-09.4.
2. Ideal cash bank master records according to subsection ~~54~~ of section 99-01.3-03-09.
3. Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
4. The count and reconciliation of cash banks according to subsections ~~54~~ and ~~76~~ of section 99-01.3-03-09.

History: Effective July 1, 2012; amended effective April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-05 RAFFLES

Section

99-01.3-05-01	Raffle
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99-01.3-05-01. Raffle.

A raffle is a game in which a prize is won by a player who bought a raffle ticket or square on a raffle board. A winning player is determined by drawing a ticket stub or number of a square on a raffle board from a receptacle or by an alternate fair method approved by the attorney general. A calendar raffle is a raffle in which a player's ticket stub is entered in two or more drawings held on predetermined days over an extended period of time for predetermined prizes. For a raffle board, the numbered squares on the board must be sold for the same price at a site on the day of the drawing. A licensed organization or organization with a permit shall complete on the board the cost per square, prizes, and date of the raffle and, for a licensed organization, ensure a raffle board includes a state gaming stamp affixed by a distributor. For each square sold, an employee shall legibly write the player's full name in the square purchased by the player. Duplicate numbers corresponding to the numbered squares on a board must be placed into a receptacle for drawing. The conduct of a raffle is the drawing or alternate fair method of selection approved by the attorney general. Only a licensed gaming organization may sell raffle tickets online over the internet and may accept an electronic payment, including payment by a debit or credit card, for the purchase of a raffle ticket. A licensed organization must use a licensed raffle system provider who must utilize a geolocation system that is certified by an approved independent testing laboratory. For online raffles, all tickets must be sold and purchased online. All electronic payments of raffle tickets must be completed through an organization's website and all receipts from debit and credit card transactions must be deposited directly in the gaming account. An organization with a local permit or restricted event permit may not sell raffle tickets online or accept credit card payments.

History: Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004; April 1, 2016; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-05-01.1. Online raffle ticket sales.

1. A licensed organization may sell raffle tickets online over the internet and may accept an electronic payment, including payment by a debit or credit card, for the purchase of a raffle ticket. Any fees related to the use of an electronic payment is a gaming expense to the organization.
2. At least two months before conducting an online raffle ticket sales event, a licensed organization must first complete a form prescribed by the attorney general for approval.
3. An organization that accepts payment by credit card for the purchase of a raffle ticket shall limit an individual's ticket purchases using a credit card to five hundred dollars per day, not to exceed one thousand five hundred dollars per week.

4. Electronic fifty-fifty raffles, raffle boards, calendar raffles, and double roll ticket raffles may not be sold or conducted online over the internet. All tickets must comply with subsections 1 through 10 of section 99-01.3-05-02 and subsections 1 through 13 of section 99-01.3-05-04.
5. The conduct of a raffle is the drawing of a physical ticket to determine the winner. No ticket may be drawn online using a random number generator and a drawing must comply with subsection 9 of section 99-01.3-05-02.
6. If a licensed organization accepts an electronic payment for the purchase of a raffle ticket, the organization shall verify the ticket purchaser is at least eighteen years of age and is physically located in the state of North Dakota.
7. All raffle announcements or advertisements conducted over the internet must include the following restrictions and information on the organization's website:
 - a. Name of organization;
 - b. Organization license number;
 - c. Price of each ticket, including any discounted price;
 - d. Prize, description of an optional prize selectable by a winning player, or option to convert a merchandise prize to a cash prize that is limited to the lesser of the value of merchandise prize or twenty-five thousand dollars;
 - e. A statement that a person is or is not required to be present at a drawing to win;
 - f. Date and time of the drawing;
 - g. Location and street address of the drawing;
 - h. If a merchandise prize requires a title transfer involving the department of transportation, a statement that a winning player is or is not liable for sales or use tax;
 - i. The statement that a person must be at least 18 years of age to buy a ticket;
 - j. The statement that a person purchasing a ticket must be physically located in the state of North Dakota; and
 - k. A statement that a purchase of the ticket is not a charitable donation.
8. For tickets sold electronically, the tickets must be detached, scanned, and emailed to the purchaser. The stubs must be kept in a safe location until they are placed in the receptacle for the drawing to determine the winner.

History: Effective January 1, 2023

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-10.1

99-01.3-05-02. Tickets - Limitations and requirements.

1. Each raffle ticket is a separate and equal chance to win with all other tickets sold. A person may not be required to buy more than one ticket, or to pay for anything other than the ticket, to enter a raffle. An organization may sell several tickets or sell tickets in advance of a special event to a person at a discount. A discounted ticket must be specifically designated as a discounted ticket on the ticket and its stub. The number of discounted tickets must be predetermined and separately issued and accounted for when issued to a ticket seller.

2. An organization may not allow a raffle ticket seller to retain a ticket for free or retain any portion of the price of a ticket as compensation, and may not compensate the seller a certain amount or provide a gift for selling a winning ticket. An organization may provide a raffle ticket seller a fixed amount for selling the most or a certain number of tickets. No raffle ticket can be resold.
3. A raffle ticket must have a detachable stub that is consecutively numbered. A raffle ticket stub must have a duplicate number corresponding to the number on the ticket and contain the player's name, address, and telephone number, or email address, except when double roll tickets are used. A ticket must be issued, as a receipt, to a player. For a raffle conducted by a licensed organization, the ticket numbers must be mechanically or electronically imprinted. For a raffle conducted by an organization that has a permit, the ticket may be manually imprinted.
4. An employee may not sell a ticket on a site where another organization is licensed or has a permit unless the employee is granted permission by the lessor and other organization. An employee of a lessor may sell raffle tickets at the site for the organization authorized to conduct games at that site, [except for online raffles according to section 99-01.3-05-01.1](#).
5. A ticket seller shall return the stubs of all tickets sold. The stubs must be intermixed in a receptacle.
6. An organization shall return the price of a ticket to a player if the stub of the player's ticket was not placed in the receptacle for the drawing.
7. For a calendar raffle, the stub of each ticket sold must be entered in all the drawings conducted since the ticket was sold. A licensed organization may not conduct a calendar raffle for other than a fiscal year beginning July first and ending June thirtieth.
8. An organization may not conduct a drawing unless two employees are present. A drawing must occur at an authorized public or private site.
9. In conducting a drawing, an employee shall draw a stub for the highest valued prize first. If there is more than one prize, an employee shall continue drawing for the prizes in the order of descending value. A prize is valued at its cash value or retail price. An organization may defer announcing the names of the winning players and respective prizes until after all the drawings have occurred and may make the announcement in any sequence. This rule does not apply when an organization adopts a written policy to place a winning player's stub immediately back into a receptacle to potentially be drawn for another prize or multiple drawings with a winner's choice of prizes.
10. An organization may not print any word or phrase on promotional material or advertising which implies or expresses that a purchase of the ticket is a charitable donation.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; April 1, 2016; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-05-04. Information on a ticket.

Each raffle ticket must contain this preprinted information, except for double roll tickets:

1. Name of organization;
2. Ticket number;
3. Price of the ticket, including any discounted price;

4. Prize, description of an optional prize selectable by a winning player, or option to convert a merchandise prize to a cash prize that is limited to the lesser of the value of the merchandise prize or twenty-five thousand dollars for a licensed organization or ~~six~~eight thousand dollars for an organization with a permit. However, if there is insufficient space on a ticket to list each minor prize that has a retail price not exceeding twenty-five dollars, an organization may state the total number of minor prizes and their total retail price;
5. For a licensed organization, print "office of attorney general" and license number. For an organization that has a permit, print the authorizing city or county and permit number;
6. A statement that a person is or is not required to be present at a drawing to win;
7. Date and time of the drawing or drawings and, if the winning player is to be announced later, date and time of that announcement. For a calendar raffle, if the drawings are on the same day of the week or month, print the day and time of the drawing;
8. Location and street address of the drawing;
9. If a merchandise prize requires a title transfer involving the department of transportation, a statement that a winning player is or is not liable for sales or use tax;
10. If a purchase of a ticket or winning a prize is restricted to a person of a minimum age, a statement that a person must be at least " _____ " years of age to buy a ticket or win a prize;
11. A statement that a purchase of the ticket is not a charitable donation;
12. If a secondary prize is an unguaranteed cash or merchandise prize, a statement that the prize is not guaranteed to be won and odds of winning the prize based on numbers of chances; and
13. If a prize is live beef or dairy cattle, horse, bison, sheep, or pig, a statement that the winning player may convert the prize to a cash prize that is limited to the lesser of the market value of the animal or twenty-five thousand dollars for a licensed organization or ~~six~~eight thousand dollars for an organization with a permit.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; April 1, 2016; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-05-05. Double roll tickets.

An organization may use double roll tickets provided:

1. Two single tickets must be printed side by side on a roll with a consecutive number. Both tickets must have the same number;
2. A list of the prizes must be disclosed or made available to players or the prize must be present at the site. If there is more than one prize, an organization may use a different receptacle for each prize to enable an employee or player to place one of the tickets in the receptacle related to a certain prize, or one receptacle in which the winning player can select from a variety of prizes. All tickets must be sold consecutively or in consecutive sets if the tickets are tracked by each ticket seller at an authorized site on the day of the raffle. All the tickets of each separately colored roll must be sold for the same price on that day. An organization may use a separate colored roll to sell several tickets to a person at a discount. The organization and player each retains one ticket, unless the player is allowed to temporarily retain the entire ticket until the player places one ticket into a receptacle;

3. A winning player need not be present when a drawing is held but shall claim the prize within a reasonable redemption period set by the organization on the same day of the raffle drawing. Otherwise, an organization shall conduct one or more additional prize drawings until the prize is claimed. A statement of the time of the drawing and redemption period must be on all promotional material and be posted at a site. If the prize is not claimed due to time limitations, the organization shall contact the attorney general the next business day; and
4. The organization's daily records must contain the ticket color, ticket selling price, lowest-numbered and highest-numbered tickets sold, and total tickets sold from each roll. A verification of the tickets used must be done by two persons, unless there is only one employee on duty at the time. Both persons shall participate in the verification in the presence of each other and resolve any differences. After completing and documenting the verification, both shall initial the record. Any tickets left on a roll which will not be sold in any other raffle must be retained as part of the daily records for one year from the end of the quarter in which the activity was reported on a gaming tax return. This subsection does not apply to a local permit.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-05-07. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For each raffle that uses tickets with detachable stubs:
 - a. Purchase invoice documenting the purchase of tickets and range of ticket numbers printed;
 - b. Ticket distribution log containing a ticket seller's name, quantity issued, range of single and discounted ticket numbers issued to the seller, and quantity sold;
 - c. Reconciliation of the cash received from each ticket seller based on the number of tickets sold, including discounted tickets, date cash is received, and a schedule of bank deposits;
 - d. A sample of a ticket;
 - e. The stubs of all sold raffle tickets and all unsold raffle tickets ~~which~~ must be retained for one year from the end of the quarter in which the activity was reported on a tax return; and
 - f. Documentation of the cost of nongaming activity according to subdivision b of subsection 1 of section 99-01.3-05-06.
2. For each online raffle:
 - a. The single event raffle accounting and operating records according to subsection 2 of section 99-01.3-16-09.5;
 - b. A reconciliation of the cash and credit card receipts received to the dollar value of draw numbers sold, date cash or electronic payment is received, and schedule of bank deposits;

- c. A reconciliation of all sold, voided, and unsold draw numbers to the total number of draw numbers that were available for sale;
- d. The actual winning draw number bearer tickets and stubs of all sold raffle tickets which must be retained for one year from the end of the quarter in which the activity was reported on the tax return; and
- e. List of the electronic mail addresses of each purchaser.

3. For each raffle that uses double roll tickets:

- a. The daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
- b. Daily records according to subsection 4 of section 99-01.3-05-05;
- c. Inventory records according to subsection 4 of section 99-01.3-03-09; and
- d. The count and reconciliation of rolls of tickets and cash banks according to subsections ~~4, 5, and 7~~ 3, 4, and 6 of section 99-01.3-03-09.

~~3.4.~~ For each raffle board:

- a. The sold raffle board with the state gaming stamp affixed which must indicate the winning number and player;
- b. The daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
- c. Inventory records according to subsection 1 of section 99-01.3-03-09; and
- d. The count and reconciliation of raffle boards and cash banks according to subsections 1, ~~5~~ 4, and ~~7~~ 6 of section 99-01.3-03-09.

~~4.5.~~ For all raffles:

- a. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
- b. Cash profit as defined in subdivision b of subsection ~~8~~ 9 of section 99-01.3-02-01;
- c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all raffles for a quarter must reconcile to the tax return; and
- d. Purchase invoice or receipt documenting the cost and description of a merchandise prize.

~~5.6.~~ Ideal cash bank master records according to subsection ~~5~~ 4 of section 99-01.3-03-09.

~~6.7.~~ Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-05.1 ELECTRONIC FIFTY-FIFTY RAFFLE SYSTEMS

Section

- 99-01.3-05.1-01 Electronic Fifty-Fifty Raffle System
- 99-01.3-05.1-02 Tickets - Limitations and Requirements
- 99-01.3-05.1-03 Prize Restrictions and Requirements
- 99-01.3-05.1-04 Information on a Bearer Ticket
- 99-01.3-05.1-05 Recordkeeping

99-01.3-05.1-01. ~~Fifty-fifty~~Electronic fifty-fifty raffle system.

An electronic fifty-fifty raffle system means computer hardware, software, and related equipment used to sell fifty-fifty raffle tickets and account for sales. ~~An electronic~~ An electronic fifty-fifty raffle system server must be located in a secure location at the site of the raffle event. ~~An electronic~~ An electronic fifty-fifty raffle system must be operated by the organization conducting the raffle. A winning player is determined by either drawing a draw number from a receptacle or by using a random number generator. A draw number is a number that is provided to the player on a bearer ticket which may be selected as the winning number for the raffle. A bearer ticket is a paper ticket that contains one or more draw numbers purchased. The conduct of a raffle is the drawing. ~~Fifty-fifty~~ Electronic fifty-fifty raffle systems may only be used for single event raffles. Single event raffles are raffles conducted on the same day at the same event.

History: Effective April 1, 2016; amended effective July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-05.1-02. Tickets - Limitations and requirements.

1. Each draw number is a separate and equal chance to win with all other draw numbers sold. A person may not be required to buy more than one draw number or to pay for anything other than the draw number to enter a fifty-fifty raffle.
2. Tickets must be purchased from attendant-operated electronic fifty-fifty raffle sales units. Player-operated fifty-fifty raffle sales units are not permitted. A raffle sales unit is a portable wireless device or standalone cashier station that is used as a point of sale for bearer tickets that include the draw numbers purchased by the player. A discounted ticket is a bearer ticket that contains a specific number of draw numbers at a discounted price.
3. Tickets must only be printed when sold to a player. Preprinting of tickets is prohibited.
4. An organization may not allow ~~a~~ an electronic fifty-fifty raffle ticket seller to retain a draw number for free or retain any portion of the price of a ticket as compensation and may not compensate the seller a certain amount or provide a gift for selling a winning draw number. An organization may provide a raffle ticket seller a fixed amount for selling the most or a certain number of tickets. No ticket can be resold.
5. An organization may not conduct a drawing unless two employees are present. A drawing must occur at an authorized public or private site. All draw numbers in the receptacle must be intermixed before drawing a winning draw number.
6. An organization may not print any word or phrase on promotional material or advertising which implies or expresses that a purchase of the ticket is a charitable donation.
7. Draw numbers purchased from a raffle sales unit must be issued and numbered consecutively. Upon completion of a sale, the player shall receive a bearer ticket with the draw numbers printed on it for a chance to win a raffle drawing.

8. No sales of electronic fifty-fifty raffle tickets may occur after the raffle purchase period has been closed. A raffle drawing must only be conducted after all raffle sales units have completed their final sync to the system server to ensure all sold draw numbers have been printed into the receptacle.
9. The winning draw number must be verified with the system as a sold and valid draw number prior to payout. The player shall present the bearer ticket to the organization for validation with the winning draw number. Voided tickets and their draw numbers must not be qualified toward any prize.

History: Effective April 1, 2016; amended effective January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-05.1-05. Recordkeeping.

For each fifty-fifty single event raffle, records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. The single event raffle accounting and operating records according to subsection 2 of section 99-01.3-16-09.5.
2. The daily starting and ending cash on hand records according to section 99-01.3-03-06.
3. A record identifying the allocation of draw numbers to each raffle sales unit and the seller's names assigned to each unit.
4. A reconciliation of cash received to the dollar value of draw numbers sold for each raffle sales unit and its sellers and in total for the single event raffle.
5. A reconciliation of all sold, voided, and unsold draw numbers to the total number of draw numbers that were available for sale for each single event raffle.
6. The actual winning draw number, bearer ticket showing purchase of the winning draw number, and all sold and voided draw numbers if the winning player is determined by drawing a draw number from a receptacle, which must be retained for one year from the end of the quarter in which the activity was reported on a tax return.
7. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08.
8. Cash profit as defined in subdivision b of section 89 of section 99-01.3-02-01.
9. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all raffles for a quarter must reconcile to the tax return.
10. Ideal cash bank master records according to subsection 54 of section 99-01.3-03-09.
11. Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
12. The count and reconciliation of cash banks according to subsections 54 and 76 of section 99-01.3-03-09.

History: Effective April 1, 2016; amended effective July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-06

99-01.3-06-01. Games - Definitions.

This chapter applies to a licensed organization that conducts pull tabs, club specials, tip boards, seal boards, prize boards, ~~and punchboards, but not pull tabs or prize boards involving a dispensing device~~. The maximum price per chance is two dollars. A prize board, club special, punchboard, seal board, and tip board are conducted as a single game which may have a cash or merchandise prize and one or more seal prizes. The value of a seal prize or a last sale prize may exceed the value of the top tier prize. For pull tabs described by subsection 3, only a cash prize can be awarded, not a merchandise or seal prize.

1. "Club special" means a placard used with pull tabs and it contains numbered lines and a seal covering the winning number of the top tier prize. A player may win a minor prize or, if the player has a pull tab with a number matching a predesignated number on the placard, would sign the player's full name on the line. Only one player's name may be signed on a specific line. When all the lines are signed, a seal is removed to reveal a winning line number. A player whose signature is on that line wins the seal prize. An organization is responsible for ensuring that a complete description and retail price of a merchandise seal prize, description of minor merchandise prizes, or cash prize to be awarded and cost per play is on a flare. The maximum number of pull tabs in a deal is five hundred. The maximum cash prize, last sale prize, or seal prize, including the retail price of a merchandise prize, is one hundred fifty dollars.
2. "Prize board" means a board used with pull tabs to award cash or merchandise prizes. Coins of various values may be affixed to the board and, under each coin, a cash prize value is preprinted on the board. A board must contain numbered lines and a seal covering a winning number. A player having a pull tab with a number matching a predesignated number on a board for a seal prize signs the player's full name on the numbered line or supplemental sheet. Only one player's name may be signed on a specific line. However, if a number or symbol matches a winning number or symbol assigned to a specific coin or minor prize, the player wins that coin or prize, and a cash prize value stated under the coin. A last sale prize may be awarded. When the board is closed, a seal is removed to reveal the winning line number. A player whose signature is on that line wins the seal prize. No board may be closed unless all the top tier winning pull tabs have been redeemed, all the pull tabs are sold, all the seals have been opened, or the board has been conducted for ninety calendar days. An organization is responsible for ensuring that a complete description and retail price of a merchandise seal prize, description of minor merchandise prizes, or cash prize to be awarded and cost per play is on a board. A seal prize and a last sale prize are not considered top tier prizes. If a coin is not awarded, an organization shall determine the prizes to report on a tax return by prorating the total cost of the coins, according to their face value, of the coins that were awarded to the total face value of all the coins. An organization may use an unawarded prize in another game, sell the prize, or deposit the coin in the gaming account. The maximum number of pull tabs in a deal is two thousand. The maximum cash prize, last sale prize, or seal prize, including the retail price of a merchandise prize, is five hundred dollars.
3. "Pull tab" means a folded or banded ticket (jar ticket), a card with break-open tabs (pull tab), or a ticket with a latex covering. The terms "pull tab" and "jar ticket" are used interchangeably unless otherwise stated. A winning pull tab contains certain symbols or numbers and may contain multiple winning symbols or numbers. A ~~pull tab~~pull-tab game must be played with two or more deals commingled at any time. The maximum cash prize for a winning symbol or number on a pull tab or last sale prize is five hundred dollars.
4. "Punchboard" means a board comprised of holes that contain numbered slips of paper (punches). A punchboard may include a seal prize, and more than one last sale prize if the

punchboard is split into more than one section. An employee or player extracts a punch from the punchboard. If the number on the punch matches a number on a flare, the player wins a prize. No punchboard may be closed unless all the top tier winning punches have been redeemed, all the punches are sold, or the punchboard has been conducted for ninety calendar days. A seal prize and a last sale prize are not considered top tier prizes. An organization is responsible for ensuring that a complete description and retail price of a merchandise seal prize, description of minor merchandise prizes, or cash prize to be awarded and cost per play is on a board. The maximum cash prize, seal prize, or last sale prize, including the retail price of a merchandise prize, is five hundred dollars.

5. "Seal board" means a placard containing consecutively numbered lines. A seal covers the winning number. A player buys a blank "line" and signs the player's full name on it. Only one player's name may be signed on a specific line. After all the lines are signed, the seal is removed to reveal the winning line number. An organization is responsible for ensuring that a complete description and retail price of a merchandise seal prize or cash prize to be awarded and cost per play is on a board. The maximum seal cash prize or retail price of a merchandise prize is five hundred dollars.
6. "Tip board" means a placard to which jar tickets or pull tabs are attached. A seal covers the winning number of the top tier prize. A player may win a minor prize or, if the number of a player's jar ticket matches a number on the placard, the player signs the player's full name on the line. Only one player's name may be signed on a specific line. After all the lines are signed or all the pull tabs have been sold, the seal is removed to reveal the winning number. An organization is responsible for ensuring that a complete description and retail price of a merchandise seal prize, description of minor merchandise prizes, or cash prize to be awarded and cost per play is on a board. The maximum number of jar tickets or pull tabs in a deal is five hundred. The maximum cash prize, seal prize, or last sale prize, including the retail price of a merchandise prize, is one hundred fifty dollars.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-08

99-01.3-06-02. Conduct and play.

1. Deals of pull tabs must be commingled for a game as follows:
 - a. Two or more deals must be placed in a receptacle and be thoroughly intermixed. When an organization's predetermined number or range of numbers of winning pull tabs remain in a game as unredeemed, an additional deal is added. An employee shall add a deal to a game when there are about two hundred fifty pull tabs remaining and the game cannot be or is not being closed. The new pull tabs must be intermixed with the pull tabs in the receptacle before any pull tab is sold;
 - b. The deals must be identical except for the game serial number, and a minor difference in printing that is approved by the attorney general. Each deal must have at least two top tier winning pull tabs. If deals of a game involve folded or banded jar tickets, the color of the tickets' band must be the same; however, multiple-colored bands on a single ticket may be used. When a deal is added to a game, an employee shall compare the color of a deal's pull tabs to the color of the game's pull tabs. If the two colors are not the same, the deal cannot be used;
 - c. A master flare or flare for at least one deal of a game must be displayed with the game and be visible to and not easily removed by a player. An organization shall retain all original flares at a site while a game is in play. If a deal has a last sale prize feature, the

deal's flare must also be displayed. Only the flare of one deal of a game may have a last sale prize feature;

- d. If an indicator for adding a deal to a game has been reached and an organization does not have a deal to add, the organization shall temporarily suspend the game until it procures a deal. However, if the organization is unable to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;
 - e. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter, a game may be closed anytime if all top tier winning pull tabs have been redeemed;
 - f. Except as provided by subdivision g, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and a game has been in play for twenty-five consecutive calendar days; and
 - g. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period.
2. An employee may not place a deal of pull tabs, club special, or prize board in play which has a manufacturer's or distributor's seal broken on the game's container when the game was received from a distributor. A person may not take off a deal's manufacturer's cellophane shrink wrap or break the manufacturer's or distributor's security seal on the deal's container until the deal is to be placed in a receptacle. If a distributor's or manufacturer's security seal is broken before the deal is used, an organization shall return the deal to the distributor. If a deal is packaged in two or more containers, the full deal must be placed in play at the same time.
 3. The following rules, information, and policies must be posted or made available to players in the area where pull-tab activity is conducted. If made available to players, the rules, information, and policies must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
 - a. Restricting the play of a game to one player or a group of players is prohibited;
 - b. A winning pull tab must be redeemed within a fifteen-minute time limit;
 - c. If a person knowingly solicits, provides, receives, or knowingly uses any inside information, from or to any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
 - d. A pull tab cannot be redeemed if it has been taken from the gaming area;
 - e. To the best of the organization's knowledge, a prize remaining on a board relates to a winning pull tab that has not been redeemed. This rule is not required to be posted or made available to players if an organization does not conduct a prize board;
 - f. A deal may be added to a game at any time;

- g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited. This rule is not required to be posted or made available to players if an organization does not pay a prize that requires a record of win;
 - h. For any last sale prize, the method of determining which player is entitled to buy the last pull tab or punch for a last sale prize when two or more players desire to buy the last pull tab or punch;
 - i. The information, if any, authorized by subdivision a or b, or both, of subsection 5;
 - j. Any limit on the number of pull tabs or punches that a player may buy at a time; and
 - k. When a game is being closed, an employee shall:
 - (1) Post a notice that the game is being sold out; and
 - (2) Any limit on the number of pull tabs or punches that two or more players may buy at a time.
4. A player may not redeem and an employee may not knowingly pay a prize for a pull tab after fifteen minutes have elapsed since the pull tab was bought. If a player attempts to redeem a pull tab after the time limit, an employee shall, if possible, retain and void the pull tab.
5. A person may post the information referenced by subdivision a or b, or both, for a commingled game provided that the posting contains a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. A posting must be visible to players in the area where jar bars are located and where the game type is conducted. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain unredeemed. Posted information may be as described in subdivision a or b, or both:
- a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.
 - b. The number of unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern. The information must be continually updated.
6. An organization may limit the number of pull tabs a player may buy regardless if the player is redeeming a winning pull tab.
7. An employee may not selectively pick a pull tab from a receptacle based on its game serial number or other factor. An employee shall take a handful of pull tabs from a receptacle and count off the number bought. An employee may not permit a player to physically handpick a pull tab or honor a player's request to select a specific pull tab. However, an employee may honor a player's suggestion to select a pull tab from a general area of a receptacle. In applying subsection 2 of North Dakota Century Code section 53-06.1-16, the phrase "fraudulent scheme or technique" includes an employee selecting, by any method, only certain

pull tabs in a game or an employee not thoroughly intermixing pull tabs of the initial or added deals.

8. An employee may only assist a person with a disability in opening a pull tab.
9. An employee shall deface a winning number or symbol of a pull tab, including pull tabs used with a prize board, and punchboard punch when it is redeemed. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced. An employee may not knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, has a game serial number different from the serial numbers of the deals in the game, or is defective.
10. If a player buys a set of banded jar tickets and before opening or breaking the band of any jar ticket, determines that the set contains less than the standard number of tickets, an employee may issue the player only the number of tickets actually missing or may issue the player a new set in exchange for the defective set.
11. When a game is being closed, an organization may continue to conduct the game although all of its top tier and minor winning pull tabs have been redeemed. An employee may not permit a player to buy out a game except when a game is being closed. If an organization closes a game that has pull tabs unsold, it may not open or place the pull tabs back into play.
12. Unless an organization conducts a commingled game according to subdivision e of subsection 1 or closes a commingled game at least monthly, an employee who did not conduct the game, have sole access to the games in play, cash banks, and receipts or cash profit for the games, shall do a monthly interim audit of the game. If the percent-of-accuracy of all the games of a site for the previous quarter was less than ninety-eight and one-half percent, and a cash shortage of more than one hundred dollars, an employee who did not conduct the game, have sole access to the games in play, cash banks, and receipts or cash profit for the games, shall do a weekly interim audit of the games for that site for up to twelve continuous weeks or until the organization determines, resolves, and documents the cause. One of the weekly interim audits may be the audit required by subsection 7 of section 99-01.3-03-10. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general. Percent-of-accuracy is computed as cash profit divided by adjusted gross proceeds.
13. An employee shall award the last sale cash or merchandise prize to the player who actually buys the last pull tab or punch.
14. An organization may transfer a commingled game, club special, tip board, seal board, prize board, and punchboard from a site to another site, or rotate games among sites. If an organization discontinues gaming at a site, it may close a game. If a game is in the process of being conducted through a jar bar, the game cannot be transferred to a dispensing device. A game must be reported for the site at which it was closed and on a tax return for the quarter in which it was closed.
15. An employee may not pay, from any source of funds, a prize to a player unless the player redeems an actual winning pull tab that has a game serial number from a game conducted at the site. This rule does not apply to a last sale prize.
16. Before leaving a jar bar unattended, an employee shall safeguard the games, cash, and records.
17. An organization may not publicly display a redeemed pull tab.

18. An organization or employee may not reimburse, from any source of funds, an amount to a player for play of a game that has a manufacturing defect or has an incorrect posting of information described by subsection 5, unless the attorney general approves.
19. If an organization suspects or determines that a game may be defective, the organization shall temporarily suspend the game, notify the attorney general, and follow the attorney general's instructions.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-08

99-01.3-06-03. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. All redeemed and unsold pull tabs or punches for a game must be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return.
2. For a commingled game, an accounting of each deal's, shift's, or day's redeemed pull tabs, including the number by prize value, total prizes, and number of redeemed top tier pull tabs by game serial number. This accounting must be consistent and be done each time a deal is added to a game, a shift ends, or at the end of each day. If the accounting is done each time a deal is added to a game, the redeemed winning pull tabs for the period must be grouped separately and retained with all other groups of pull tabs of that game. If the accounting is done at the end of each shift or day, the redeemed winning pull tabs for each shift or day must be banded and each banded group must be dated with the date of activity and be retained in a storage container with all other banded groups of that game. For each game, there must be a daily accounting of deals added to a game, by gaming stamp and game serial numbers, and of the cash profit and bank deposit.
3. For a club special, tip board, seal board, prize board, and punchboard, an accounting of prizes, by state gaming stamp number.
4. A daily accounting of starting and ending cash on hand and IOU records according to section 99-01.3-03-06.
5. For a deal of pull tabs or prize board, the game information sheet, flare with the state gaming stamp affixed, and one master flare; and for a club special, tip board, punchboard, and seal board, the flare, with the state gaming stamp affixed.
6. A summary of ideal gross proceeds, value of unsold pull tabs or punches, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries for a quarter must reconcile to the activity reported on the tax return.
7. Record of win according to section 99-01.3-03-08.
8. Inventory records according to subsection 1 of section 99-01.3-03-09.
9. Ideal cash bank master records according to subsection [54](#) of section 99-01.3-03-09.
10. An organization approved by the attorney general to use a combined cash bank for pull tab games at a site shall document the allocation of cash profit to each game based on the ratio of a game's adjusted gross proceeds to the total adjusted gross proceeds of all the games.

11. For a commingled game, club special, tip board, seal board, prize board, and punchboard the cash profit as defined in subdivisions c, f, and g of subsection ~~89~~ of section 99-01.3-02-01.
12. Interim audit records according to subsection 12 of section 99-01.3-06-02.
13. Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
14. Purchase invoice or receipt documenting the cost and description of a merchandise prize.
15. The count and reconciliation of deals, games, and cash banks according to subsections 1, ~~54~~, and ~~76~~ of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-06.1 ELECTRONIC ~~PULL-TAB~~PULL-TAB DEVICES

Section

- 99-01.3-06.1-01 Electronic ~~Pull-Tab~~Pull-Tab Devices
- 99-01.3-06.1-02 Use and Requirements of an Organization
- 99-01.3-06.1-03 Requirements of a Bar
- 99-01.3-06.1-04 Requirements of a Bar and an Organization
- 99-01.3-06.1-05 Recordkeeping

99-01.3-06.1-01. Electronic ~~pull-tab~~pull-tab devices.

"Electronic ~~pull-tab~~pull-tab device" means a device, approved by the attorney general, which electronically displays pull tabs. The device is part of an electronic ~~pull-tab~~pull-tab device operating system used in the conduct of electronic pull tabs. After the insertion of cash or the manufacturer's credit ticket voucher into the electronic ~~pull-tab~~pull-tab device's currency validator, the player has access to a credit account allowing for the purchase and play of an electronic pull tab. Following the play of an electronic pull tab on an electronic pull-tab device, the result must be clearly shown on the video display along with any prizes that may have been awarded. If a winning combination of numbers, letters, or symbols is displayed after opening the electronic pull tab, a ~~player wins credits~~the player's winning prize amount must be dispensed in the form of a credit ticket voucher or added to the credit meter. Credits that are displayed on the credit meter ~~and~~ can be used to purchase more electronic pull tabs or cashed out to a voucher which ~~can be redeemed for cash~~may be redeemed for cash or inserted for credits in the manufacturer's electronic pull-tab device.

History: Effective July 1, 2018; amended effective January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-06.1-02. Use and requirements of an organization.

1. An organization may not install more than ten electronic ~~pull-tab~~pull-tab devices in a site. A site must be a permanent location and may not be a temporary location, such as a fairground or special event. A device must be clearly labeled so as to inform the public that no one under twenty-one years of age is allowed to play.
 - a. An electronic ~~pull-tab~~pull-tab device must be a stand-alone cabinet style device. No device may be a hand-held portable device or affixed to a bar, counter, or table top.
 - b. An electronic ~~pull-tab~~pull-tab device must be used only to play electronic pull tabs. No other game type may be played on the device and no level of player skill may be involved in the determination of any ~~pull-tab~~pull-tab prize. A device may not be part of a progressive system or employ any other features, such as bonus plays or promotions. An extended play feature may be used in which a player may play without additional consideration. An extended play feature must not interfere with or in any way affect the outcome of any finite game being played. If an extended play feature is used a notification must be provided to the player explaining that an extended play feature is used on the game and that "Extended play features prolong the play of an electronic ~~pull tab~~pull-tab ticket but do not award a prize in addition to the predetermined prize for that ticket."
 - c. Insertion of United States paper currency ~~only~~or the manufacturer's credit ticket voucher must be accepted through the electronic ~~pull-tab~~pull-tab device's currency validator to initiate play.

- d. An electronic ~~pull-tab~~pull-tab device may not directly dispense coins, cash, tokens, or anything else of value other than a credit ticket voucher.
2. An organization may not have more than ~~six~~twelve electronic ~~pull-tab~~pull-tab game titles selectable for play on an electronic ~~pull-tab~~pull-tab device operating system at a site. Only one of the games can be selected for play on an electronic ~~pull-tab~~pull-tab device at any given time. A winning line or pattern on an electronic pull tab may be made up of a combination of numbers, letters, or symbols. A winning electronic pull tab may have more than one winning line or pattern. Each winning line or pattern on a winning pull tab constitutes an individual win. Game themes must not contain offensive or obscene graphics, animations, or references.
3. An organization only may conduct electronic ~~pull-tab~~pull-tab device activity during the hours when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city. A device must be programed to not allow play during hours when alcoholic beverages may not be dispensed.
4. The following rules must be posted on or near an electronic pull-tab device and must be visible to the player:
 - a. A player may play only one electronic ~~pull-tab~~pull-tab device at a time;
 - b. An electronic ~~pull-tab~~pull-tab device may not be reserved. However, a device may be held for an active player for no more than fifteen minutes;
 - c. A credit ticket voucher is only valid and must be redeemed on the same business day as it was printed; ~~and~~
 - d. If a credit ticket voucher leaves the site it is void. The device system must void any outstanding vouchers at the end of the business day; and
 - e. If a person knowingly solicits, provides, or receives any inside information, by any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving electronic pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail, or both.
5. An organization shall maintain custody of all keys to an electronic ~~pull-tab~~pull-tab device. A bar employee may not have access to a device. The keys for each lock on a device must be keyed differently, including the lock for a device's outer door and the inner compartments that must separately house the computer logic ~~and server~~ area and currency validator stacker area. Access to the site server must be restricted to only authorized individuals of the organization. An organization may not provide an independent service technician keys to access an electronic ~~pull-tab~~pull-tab device or site server, regardless if the electronic pull-tab device operating system is leased.
6. An organization or employee may not modify the assembly or operational functions of an electronic pull tab device.
7. An organization may not post nor may an electronic ~~pull-tab~~pull-tab device be capable of displaying any game information relating to electronic ~~pull-tab~~pull-tab device activity, including the number of unsold pull tabs or the number and value of prizes remaining in a game.
8. An organization shall use the attorney general's current recordkeeping system for electronic ~~pull-tab~~pull-tab activity unless approval is obtained from the attorney general for use of another system.
9. An~~For each manufacturer's electronic pull-tab device operating system used to conduct electronic pull tabs at a site, an~~ organization shall:

- a. Withdraw currency and credit ticket vouchers redeemed for credit from an electronic ~~pull tab~~pull-tab device within a seven-calendar-day interim period. ~~Electronic pull tab at a site. An electronic pull-tab device operating system must be made nonoperational and electronic pull-tab~~ activity at a site must be suspended during the period of time when currency is being withdrawn from a device and credit ticket vouchers are bought back.
 - b. Generate and print an interim period electronic ~~pull tab~~pull-tab device activity report for ~~each device at~~ a site according to subdivision a of subsection ~~16~~22 of section 99-01.3-16-09.6. The information from this report must be recorded on an interim period site summary. ~~After completion of the interim period site summary, all system-generated~~The system-generated interim period electronic ~~pull tab~~pull-tab device activity ~~reports~~report must be attached and retained with the completed interim period site summary.
 - c. From the interim period site summary, post to a summary report - all games, total game activity information, including gross proceeds, prizes, adjusted gross proceeds, cash profit(loss), and cash ~~long or short~~long(short) for ~~each game~~all games conducted at a site ~~must be posted to a game summary report maintained for each game~~. The ~~game~~ summary report ~~- all games~~ must include cumulative totals for ~~each~~. ~~Total cash profit for the interim period at a site is allocated to each game based on the ratio of a game's adjusted gross proceeds to the total adjusted gross proceeds of all the games~~gross proceeds, prizes, adjusted gross proceeds, cash profit(loss), and cash long(short).
 - d. Report the total electronic pull-tab activity for all manufacturers each quarter, for all games conducted at a site, on the gaming tax return. Except for cash profit, all game information is taken from the system-generated electronic pull-tab closed game summary report, according to subdivision d of subsection 22 of section 99-01.3-16-09.6. Total cash profit for all games is taken from the summary report - all games.
10. An organization shall have a rental agreement conforming to section 99-01.3-02-06.
 11. An organization shall maintain an access log prescribed by the attorney general for each electronic pull tab device. A person who accesses a device shall record the reason for access and date and initial the log. An organization shall retain the log in the device during the quarter of activity.
 12. Credit ticket vouchers redeemed for cash, may be ~~redeemed~~paid by an organization employee when on duty, by a bar employee, or by both.
 13. For the redemption of credit ticket vouchers by organization employees at a site, an organization shall maintain one cash bank for each ~~different manufacturer's devices~~manufacturer's electronic pull-tab device operating system.
 14. An organization may provide a bar with a temporary loan to enable a bar employee to redeem a credit ticket voucher. A loan and any increase in the loan must be made by check payable to the bar and be interest free. An organization may not access, count, or take custody of the loaned money. The duration of the loan must be until the organization discontinues conducting electronic pull tabs at the site. When the bar repays the loan, the organization shall deposit the funds in its gaming account and the deposit slip must reference the site, source of funds, and amount. The amount reimbursed to a bar must equal the dollar value of redeemed credit ticket vouchers which the bar provides to an organization. An organization employee may not use a bar's loan for redeeming a credit ticket voucher.
 15. If a theft of currency occurs from an electronic ~~pull tab~~pull-tab device, an organization immediately shall discontinue ~~and close all~~ electronic ~~pull tab games~~pull-tab activity at the site associated with that manufacturer's devices, contact their distributor, and generate an interim

period electronic ~~pull-tab~~pull-tab device activity report ~~and electronic pull tab closed game summary report~~ according to ~~subdivisions~~subdivision a ~~and d~~ of subsection ~~1622~~ of section 99-01.3-16-09.6. The organization shall provide a copy of all of this information to a local law enforcement agency and the attorney general.

16. A game must be conducted and played through an electronic ~~pull-tab~~pull-tab device as follows:
 - a. Each electronic ~~pull-tab~~pull-tab deal must contain a fixed number of tickets. The maximum number of pull tab tickets per electronic deal may not exceed fifteen thousand and the minimum may not be less than two thousand.
 - (1) All electronic pull tabs in a particular deal must be of the same purchase price and may not exceed the maximum two dollars sale price per pull tab as set forth by North Dakota Century Code section 53-06.1-08;
 - (2) The maximum prize amount awarded for a winning combination of numbers, letters, or symbols on each electronic pull tab may not exceed five hundred dollars as set forth by North Dakota Century Code section 53-06.1-08;
 - (3) A deal must have at least two top tier winning pull tabs;
 - (4) Each deal may not pay out more than ninety percent of gross proceeds;
 - (5) Each deal must be assigned a unique serial number; and
 - (6) Each deal must be assigned a unique state gaming stamp number by the distributor prior to delivery to the organization site server.
 - b. ~~All games of electronic pull tabs of the same manufacturer at a site must be put into play and started at the same time.~~ For the start of each electronic pull-tab game, at least two, and no more than two electronic ~~pull-tab~~pull-tab deals must be commingled on the site server for each game. The game deals must be identical, which includes game identification, deal version, manufacturer, game name, total number of electronic pull tabs, purchase price per electronic ~~pull-tab~~pull-tab ticket, and prize structure.
 - c. For each electronic pull-tab game ~~of the same manufacturer~~, when the unsold tickets of the original starting identical two deals reach two thousand ~~pull-tab~~pull-tab tickets remaining, at least one full deal but no more than one additional identical deal of the same game must be automatically downloaded onto the site server and commingled with the remaining two thousand tickets of that game. Each time the two thousand ticket threshold is reached, an additional deal must automatically be downloaded and commingled with the remaining electronic ~~pull-tab~~pull-tab tickets in the game continuously throughout the entire quarter.
 - d. No electronic pull-tab game may be closed during a quarter unless approved by the attorney general and all games of the same manufacturer at a site must be closed at the same time within fourteen calendar days from the end of the quarter. An organization may start new games for the next quarter within fourteen days before the next quarter begins; however, it may not start new games and end the games within this fourteen-calendar-day period. Once closed, a game and its deals cannot be reopened.
 - e. ~~When~~For each interim visit or when the electronic pull-tab games are closed an employee shall buy back all ~~remaining~~ credit ticket vouchers from the organization employee cash bank and from a bar. The game must be reported on a gaming tax return for the site at which it was closed.

f. At the end of each month, an independent audit person of the organization shall reconcile the ~~game~~ summary report - all games to the monthly interim audit report according to subdivision c of subsection ~~1622~~ of section 99-01.3-16-09.6. At the end of the quarter, after ~~a game has~~ all games have been closed, the independent audit person shall reconcile the ~~game~~ summary report - all games to the electronic ~~pull-tab~~ pull-tab closed game summary report according to subdivision d of subsection ~~1622~~ of section 99-01.3-16-09.6. The electronic ~~pull-tab~~ pull-tab closed game summary report may not be generated or printed prior to ~~an~~ all electronic ~~pull-tab game~~ pull-tab games being closed. Doing so will cause immediate and automatic termination of ~~a game~~ all games. All reconciliations must be dated and signed by the independent audit person.

17. If a site closes or if an organization discontinues gaming at a site, it must generate an interim period electronic pull-tab device activity report according to subdivision a of subsection 22 of section 99-01.3-16-09.6, close all electronic pull-tab games, and generate an electronic pull-tab closed game summary report according to subdivision d of subsection 22 of section 99-01.3-16-09.6.

18. The organization immediately shall shut down an electronic ~~pull-tab~~ pull-tab device operating system and notify the attorney general if it detects or discovers any defect, malfunction, or problem with an electronic ~~pull-tab~~ pull-tab operating system, electronic ~~pull-tab~~ pull-tab device, or electronic ~~pull-tab~~ pull-tab game that affects the security or the integrity of the game. The organization shall also immediately notify their distributor of the defect, malfunction, or problem.

History: Effective July 1, 2018; amended effective January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-06.1-03. Requirements of a bar.

1. A bar shall:
 - a. Place an electronic ~~pull-tab~~ pull-tab device in a location where alcoholic beverages are dispensed and consumed and where a bar employee will regularly observe the device. A device may not be placed outside or in a patio area;
 - b. Prohibit a person from tampering or interfering with the operation or play of an electronic ~~pull-tab~~ pull-tab device;
 - c. Ensure that an electronic ~~pull-tab~~ pull-tab device is disabled from play unless alcoholic beverages may be dispensed, a bar employee is available to redeem a credit ticket voucher, and a bar has cash on hand to redeem a credit ticket voucher;
 - d. Absorb a loss related to a counterfeit or lost credit ticket voucher, redeemed credit ticket voucher that was not issued at the site on that day, and loss or theft of the temporary loan of funds;
 - e. Repay an organization's temporary loan of funds immediately upon request from the organization that discontinues conducting electronic pull tabs at a site;
 - f. If a malfunction of an electronic ~~pull-tab~~ pull-tab device is known by the bar or its employee, disable play of the device and promptly notify the organization. Otherwise, the bar or its employee is responsible for any cash shortage; and
 - g. Use an organization's loan of money only to redeem a credit ticket voucher. If the bar violates this rule, the attorney general may suspend any or all games at the site for up to six months.

2. A bar employee may not access, attempt to access, or permit a person, other than an employee of an organization, to access the interior of an electronic ~~pull-tab~~pull-tab device for any reason.
3. If a bar employee believes there is a problem with an electronic ~~pull-tab~~pull-tab device or ~~there is a problem~~ with a redeemed credit ticket voucher, the bar employee shall contact the charitable gaming organization and may disable the device ~~from play~~.
4. A bar may accept or not accept a gaming-related check from a player. A player's check must be payable to a bar. A bar is responsible for a player's check returned by a financial institution as uncollectible. A bar may allow a player to buy back the player's check with cash and may return a player's check to the player as part of the redemption of a credit ticket voucher.
5. Only a bar employee who is authorized by a bar may redeem a credit ticket voucher.
6. A bar employee may not summarize or audit an electronic ~~pull-tab~~pull-tab game for an organization.

History: Effective July 1, 2018; amended effective January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-06.1-04. Requirements of a bar and an organization.

1. A bar employee or an organization employee shall ensure that a credit ticket voucher presented for redemption is valid. This includes ensuring the voucher was issued by an electronic ~~pull-tab~~pull-tab device at the site and on the date it is presented for redemption. A valid credit ticket voucher must be paid with cash and must have the date and initials of the person who redeemed the credit ticket voucher printed on it.
2. A bar employee or an organization employee may not:
 - a. Knowingly redeem a credit ticket voucher that has been defaced, tampered with, or counterfeited. If a player attempts to redeem a voucher that has been defaced, tampered with, or counterfeited, a bar employee or an organization employee, if possible, shall retain and void the credit ticket voucher;
 - b. Knowingly redeem a credit ticket voucher that was issued at another site or a voucher that was issued prior to the business day presented for redemption. If a player attempts to redeem a voucher that was issued prior to the business day presented for redemption, a bar employee or an organization employee, if possible, shall retain and void the credit ticket voucher; and
 - c. Pay, from gaming funds or any other source, moneys to a player unless the player redeems an actual valid credit ticket voucher issued by an electronic ~~pull-tab~~pull-tab device at the site and on the ~~date~~business day it is presented for redemption.
3. If an electronic ~~pull-tab~~pull-tab device malfunctions, is inoperable, and a player has credit on the device, a bar employee or an organization employee shall pay the player for the player's unplayed credits and record the refund on a credit redemption register. A bar shall provide this form to an organization to claim a reimbursement. If a player's currency jams in a currency validator and a device does not show a credit, a bar employee may not reimburse a player, and shall record the jam on a credit redemption register and notify an organization. If an organization determines that a device is cash long, the organization shall reimburse a player by cash or check.

4. A bar employee and an organization employee shall document and attest to the number of and total dollar value of redeemed credit ticket vouchers that are exchanged for cash or check. These credit ticket vouchers must be grouped, banded, dated, and retained separate from other credit ticket vouchers redeemed for credit through an electronic pull-tab device and that an organization employee ~~may have~~ redeemed, by interim period.
5. An organization shall provide a bar employee and a bar shall maintain a current copy of subsection 8 of section 99-01.3-02-03 and sections 99-01.3-02-05, 99-01.3-02-09, 99-01.3-06.1-03, and 99-01.3-06.1-04 regarding the bar employee's and bar's duties and restrictions.

History: Effective July 1, 2018; amended effective January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-06.1-05. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. An interim period electronic ~~pull-tab~~pull-tab device activity report according to subdivision a of subsection ~~1622~~ of section 99-01.3-16-09.6. The report must be generated and printed for ~~each device at~~ a site each interim period.
2. Interim period site summary form. The information from ~~each~~the interim period electronic ~~pull tab~~pull-tab device activity report must be recorded on this form each interim period and must include totals for eachall electronic ~~pull tab game~~pull-tab games conducted at the site, including gross proceeds, prizes, and adjusted gross proceeds ~~and totals for all games~~. It also must include total cash and credit ticket vouchers redeemed for credit in each electronic ~~pull tab~~pull-tab device and in total, total credit ticket vouchers redeemed, including bar ~~and redeemed~~, organization employee redeemed if applicable, total credits paid if applicable, employee cash ~~long or short~~long(short) if applicable, cash ~~profit or loss~~profit(loss), cash long(short), and bank deposit.
 - a. ~~All~~The system-generated interim period electronic ~~pull tab~~pull-tab device activity ~~reports~~report must be attached and retained with the interim period site summary.
 - b. All redeemed credit ticket vouchers credited through an electronic pull-tab device, and exchanged for cash, bar and organization redeemed, must be retained with the interim period site summary.
3. ~~Game summary~~Summary report ~~for each game- all games~~. The total game activity information from each interim period site summary, including gross proceeds, prizes, adjusted gross proceeds, cash ~~profit~~profit(loss), and cash ~~long or short~~long(short) for ~~each game~~all games conducted at a site must be posted to a ~~game~~summary report ~~- all games~~. The ~~game~~summary report ~~- all games~~ must include cumulative totals. ~~Total cash profit for the interim period at a site is allocated to each game based on the ratio of a game's adjusted gross proceeds to the total adjusted gross proceeds of all the games for gross proceeds, prizes, adjusted gross proceeds, cash profit(loss), and cash long(short).~~
4. If an organization employee redeems credit ticket vouchers at a site, a daily employee report documenting the starting and ending cash on hand, IOU records according to section 99-01.3-03-06, and the number of and total dollar amount of credit ticket vouchers redeemed, credits paid, and cash long or short.

5. If an organization has established a runner cash reserve bank for the buyback of credit ticket vouchers, for each interim period visit, an accounting of the starting and ending cash on hand according to subsection 2 of section 99-01.3-03-06 must be completed.

~~6.~~ Credit redemption register, including the date, device identification or serial number, amount, if credits were still on the electronic ~~pull-tab~~pull-tab device, player's name and signature, signature or initials of person who paid the player, bar reimbursement information if applicable, and date paid.

~~6.7.~~ Cash profit as defined in subdivision e of subsection ~~89~~ of section 99-01.3-02-01.

~~7.8.~~ An electronic ~~pull-tab~~pull-tab closed game summary report according to subdivision d of subsection ~~1622~~ of section 99-01.3-16-09.6. This report must be generated for each manufacturer and printed after ~~each~~all electronic ~~pull-tab game is~~pull-tab games are closed at a site. Printing the report prior to ~~an~~all electronic ~~pull-tab game~~pull-tab games being closed will cause immediate and automatic termination of ~~a game~~the games. The ~~summaries of electronic pull-tab game summary reports for~~ all electronic ~~pull-tab~~pull-tab games ~~for~~conducted during a quarter must reconcile to the amounts reported on the gaming tax return.

~~8.9.~~ Access log for each electronic pull tab device, which includes the date, time, reason for entry, and initials of the employee who accessed the device.

~~9.10.~~ Deals in play report according to subdivision b of subsection ~~1622~~ of section 99-01.3-16-09.6. ~~The report must be generated and printed for each game at a site at the end of each month and retained with the records for the game, if requested by the attorney general.~~

~~10.11.~~ Monthly and quarterly audit and reconciliation records according to subdivision f of subsection 16 of section 99-01.3-06.1-02.

~~11.12.~~ Ideal cash bank master records according to subsection ~~54~~ of section 99-01.3-03-09.

~~12.13.~~ Verification of the amount deposited according to a bank statement and an audit of each electronic ~~pull-tab~~pull-tab game's activity according to subsections 6 and 7 of section 99-01.3-03-10.

~~13.14.~~ The count and reconciliation of cash banks according to subsections ~~54~~ and ~~76~~ of section 99-01.3-03-09.

History: Effective July 1, 2018; amended effective January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-07

99-01.3-07-01. Sports pool.

A "sports pool" is comprised of wagers paid by players for a line or square that will determine which player wins. The maximum cost per line or square is twenty-five dollars. The conduct of a sports pool is the selling of chances on the board and awarding of a prize. Only cash prizes can be awarded. No sports-pool board with the state gaming stamp affixed may be conducted off of a site. ~~However, an organization with a local permit may conduct a calendar sports pool off of a site.~~ A licensed organization and organization with a permit must obtain sports pool boards from a licensed distributor.

1. A sports-pool board must be a multiple line or multiple square board based on the professional sporting event, provide for an equal chance for each player to win, and be acquired from a distributor.
2. An organization shall complete the cost per play, date of sports event, ideal prizes, and method of prize payout on a board. An employee of a lessor may sell chances on a board, but not award prizes, at the site for the organization authorized to conduct games at the site. The method of prize payout may be at periodic intervals or the end of an event. The total payout cannot exceed ninety percent of the gross proceeds.
3. An organization shall designate one opponent along the vertical columns of numbers and the other opponent along the horizontal rows of numbers. However, if the opponents are unknown when the board is being sold, an organization shall designate identifiable conferences, divisions, or events. A player who buys a square or line or an employee shall write the player's full name in that square or on that line. Only one player may buy a specific square or line. Except for a calendar sports pool, no tapes may be removed until all the squares or lines are sold and the opponents are designated. All the squares or lines must be sold before the sports event begins. If all the squares or lines are not sold, an organization may advance the board to another event or refund the players' money. If opponents were designated but the board is advanced to another event, an organization may keep the same opponents or designate new opponents. When an unsold board is advanced to another event, an organization shall post a notice on a site disclosing its policy of advancing the board. Gross proceeds must be separately maintained for each board.
4. An organization may conduct a calendar or master sports pool for two or more events of the same sport. An organization shall use one board for each event and buy the necessary number of boards before selling any square. For example, if a sports pool involves sixteen events, an organization shall buy sixteen boards. A player buys the same square on each board for all the events. Each board is reported separately on a tax return for the quarter in which the event was held.
5. A calendar sports pool must be conducted as follows:
 - a. The tapes covering the numbers assigned the horizontal rows and vertical columns of the boards must be removed to reveal the numbers. One opponent must be designated along the vertical columns of numbers and the other opponent designated along the horizontal rows of numbers. The board must state the event and its date;
 - b. Each square of each board must be assigned a consecutive number starting with number one. The numbering must be in sequence, left to right;
 - c. Each board must be printed and may be reduced in size. The quantity printed is based on the type of board. For example, for a one hundred square board, each board must be printed one hundred times. A printed board for each event and a receipt comprise a book;

- d. A receipt must contain:
 - (1) A consecutive receipt number starting with one. A statement that the receipt number is the player's assigned square for all the boards in the book;
 - (2) Name and address of organization and name of site;
 - (3) For a licensed organization, print "office of the attorney general" and site license number. For an organization that has a permit, print the name of the city or county and permit number;
 - (4) Price of the book, method of prize payout and prize; and
 - (5) A detachable section containing a player's full name, address, telephone number, and matching receipt number which is retained by an organization;
 - e. An employee may not sell a book on a site where another organization is licensed or has a permit unless the employee is granted permission by the lessor and other organization;
 - f. A player may not choose a particular book to buy. When a book is sold, a receipt's detachable section is completed. After a player buys a book, the player may see the numbers assigned that player's square on the boards;
 - g. For a licensed organization, a board must be posted at the site on the day that the related event is held; and
 - h. If all the books of a calendar sports pool are not sold before the first event, an organization shall refund the players' money and void all the boards. The voided boards must be reported on the tax return as "no activity".
6. A master sports pool must be conducted as follows:
- a. An organization shall post a multiple square master board at a site. Each square must be assigned a consecutive number starting with number one. The numbering must be in sequence, left to right. A master board must include:
 - (1) Name of organization;
 - (2) The events;
 - (3) Price of participating, number of events, method of prize payout and prize; and
 - (4) A statement that the scores assigned to the players' squares for each event will be posted at the site five days before the event.
 - b. A player shall buy a square and write the player's full name and telephone number in it.
 - c. A sports-pool board with the state gaming stamp affixed must be posted at a site five days before the event related to that board is held.
 - d. If all the squares of a master sports pool are not sold before the first event, an organization shall refund the players' money and void all the boards. The voided boards must be reported on the tax return as "no activity".
7. The winner of a board is determined, at periodic intervals or at the end of the event:
- a. For a multiple line board, by determining the line that is assigned the winning number (one's position) or the combined score of both opponents.

- b. For a multiple square board, by determining the square at the juncture of the horizontal row and vertical column which relate to the numbers (one's position) of each opponent's score.
- 8. ~~An~~ Upon completion of the event, an organization immediately shall make a good-faith effort to contact a winning player to award a prize. If a prize is unclaimed for thirty days following the notification or a player attempts to falsify or falsifies a record of win, the prize is forfeited.
- 9. An employee shall record a prize on a board or a register according to section 99-01.3-03-07. If a prize is recorded on a board, the board must contain the information required by section 99-01.3-03-07. This subsection does not apply to a permit.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; April 1, 2016; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-09

99-01.3-07-02. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported:

- 1. For each sports-pool board:
 - a. The sold board with the state gaming stamp affixed which must indicate the winning square or line;
 - b. The daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
 - c. Cash profit as defined in subdivision i of subsection ~~89~~ of section 99-01.3-02-01;
 - d. The type of professional sport and amount of each prize;
 - e. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sports-pool boards conducted during a quarter must reconcile to the activity reported on a tax return;
 - f. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08; and
 - g. Inventory records according to subsection 1 of section 99-01.3-03-09.
- 2. Ideal cash bank master records according to subsection ~~54~~ of section 99-01.3-03-09.
- 3. Verification of the amount deposited according to a bank statement, and an audit of the event's activity according to subsections 6 and 7 of section 99-01.3-03-10.
- 4. The count and reconciliation of sports-pool boards and cash banks according to subsections 1, ~~54~~, and ~~76~~ of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-08

99-01.3-08-01. Twenty-one.

1. "Twenty-one" is a card game in which a player tries to obtain a higher total card count than a dealer without exceeding twenty-one. An ace counts either one or eleven. A king, queen, and jack have a count of ten. Cards two through ten are counted at their face value.
2. A maximum of seven players may play at a table. A player may play up to two betting spaces if an adjacent betting space is available. An outsider may not wager on a player's hand and a player may not wager on another player's hand.
3. For a site at which total twenty-one prizes exceeded total twenty-one gross proceeds for a quarter, an organization shall contact the attorney general within thirty days of the quarter ending to discuss the situation. In addition, twenty-one percent-of-hold records must be maintained for each dealer at that site for twelve continuous weeks. Percent-of-hold is computed as adjusted gross proceeds divided by gross proceeds.
4. An organization may pay monthly rent for more than one table provided that each additional table is used at least thirteen times a quarter. This level of activity is based on a site's historical experience, or seasonal activity, for each of the previous four quarters, regardless of which organization conducted twenty-one at the site. For a new site or a site that has been completely remodeled in appearance and function, the level of activity must be reviewed and re-established after the first full quarter. If an additional table is used at least thirteen times in at least one but not all of the previous four quarters, the allowable monthly rent for that table must be prorated over all the active months of the licensing year. For example, if a second table was used at least thirteen times in only two of the previous four quarters, the additional monthly rent for the second table would be a maximum of two hundred dollars per month, or three hundred dollars per month if a wager greater than five dollars is accepted on the table, multiplied by six months, totaling one thousand two hundred dollars, and prorated to one hundred dollars per month for the licensing year. The organization shall document each table's usage, which includes the date, table number, and drop box cash amount for each table and how the prorated rental amounts were determined. This documentation must be retained with the organization's twenty-one records for three years.

History: Effective May 1, 1998; amended effective April 1, 2016; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-02. Table, drop box, cards, and dealing shoe.

1. If there is more than one table at a site, a table must have a number. A table playing surface must be green and may not contain imprinted graphics, excluding the tip betting spaces, unless authorized by the attorney general. A table playing surface must display no more than seven separate betting spaces and these or equivalent statements:

BLACKJACK PAYS 3 TO 2

and

DEALER MUST STAND ON 17 AND MUST DRAW TO 16

or

If a site allows the dealer to take a hit card when the dealer has a soft seventeen:

BLACKJACK PAYS 3 TO 2

and

DEALER MUST HIT SOFT 17

2. A table must have a drop box that meets the specification of subsection 5 of section 99-01.3-15-02. If there is more than one table at a site, a drop box must have a number matching the table number. A drop box must have a money plunger which must remain in the slot unless the plunger is used to insert currency or forms.
3. The cards must be four, six, or eight decks and be dealt from a dealing shoe located at a dealer's left. The cards must be the same size, shape, design, and be jumbo-faced. Red or maroon and black playing cards must be used. However, if a mechanical or electronic hole card reader is used on a table, cards that are not jumbo-faced may be used provided that the organization has received approval from the attorney general. Approval must be based on the attorney general's evaluation of the clarity of the cards on a recorded video of activity for the table. The color of the backs of all decks must be one predominate color, or one-half of the number of decks must be one predominate color and the other decks a different predominate color. The design on the back of each card must be identical.
4. A dealing shoe must hold four or more complete decks of playing cards.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; October 1, 2006; July 1, 2010; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-04. Video surveillance system.

If a site had twenty-one gross proceeds averaging ten thousand dollars or more per quarter for two entire consecutive quarters, this level of activity is expected to continue, and wagers exceed two dollars, an organization shall have a video surveillance system operational at the site within forty-five days from the end of the second quarter. However, for a site with seasonal activity, this level of activity is based on the average gross proceeds of the active quarters within the fiscal year July first through June thirtieth. A level of activity is based on a site's recent historical experience, but not earlier than the previous fiscal year, regardless of which organization conducted twenty-one at the site. If an organization conducts twenty-one at a newly acquired site that has a level of activity requiring a video surveillance system, it shall have the system for a table operational within forty-five days of conducting twenty-one or limit wagers to two dollars until the system is operational. A system must be operational for each twenty-one table that is regularly located on a site, regardless of how infrequent a table is used or the value of wagers accepted at the table. A temporary table that is brought onto a site for fourteen or fewer consecutive days for a special event according to subsection 4 of section 99-01.3-01-02, but for not more than two events per quarter, does not need a system. An organization shall:

1. Install a system that meets these requirements:
 - a. A recording unit must record in real time. A video system must be approved by the attorney general and no time lapse or multiplex video recorders may be used as the primary mode of operation. A recording unit must be secured in a locked vented cabinet or area, plugged into an outlet that cannot be switched off, and be programmable with a minimum seven-day memory backup. A recording unit must have a built-in or separate time and date generator that displays the time and date on the recorded video without significantly obstructing a recorded picture. A playback unit used to review a recorded video must have forward and reverse frame-by-frame and high-speed scanning capability;
 - b. A high-resolution color camera must be positioned above the center of a table and record gaming activity from the dealer's perspective. A camera must be plugged into a surge protector and use an outlet that cannot be switched off. A camera must be protected by a slotted or clear dome;

- c. A camera lens must have a field of view to record the face of a dealing shoe, all betting spaces, discard holder, chip tray, currency plunger, and table number;
 - d. A color video monitor onsite; and
 - e. A system must be capable of allowing organizations to download, burn, or copy files onto a storage device.
2. If an organization conducts twenty-one or paddlewheels at more than one site, a table must have a site identification. A site identification and any table number must be visible on a recorded video.
3. ~~A playing surface must be green and may not contain imprinted graphics, excluding the tip betting spaces, unless authorized by the attorney general. Red or maroon and black jumbo-faced playing cards may be used.~~

~~4. Maintain a clean dome and a proper field of view on the playing surface.~~

5.4. Authorize only a gaming or shift manager or an independent person to:

- a. Access a recording unit, camera, and stored recorded video;
- b. Start and stop a recording unit for a table when chips are first made available for use on the table and continue recording until the table is permanently closed for the day; and
- c. Change a recorded video in a recording unit for a table at the beginning, during, or at the end of a day's activity, regardless if the authorized person is a dealer or wheel operator at the site. An organization may use two real time recorders in sequence to record a table's activity that exceeds the recording capability of one tape. If two recorders are used for one table, their separate recordings for a day's activity must overlap by ten minutes.

6.5. Retain a recorded video in a safe storage place for thirty days.

7.6. On a daily basis an employee shall review and document that a surveillance camera at each twenty-one and paddlewheel table at a site is recording an unobstructed view and clear picture of the table activity. If a recording unit or camera for a table is not properly operating or not producing an unobstructed view and clear picture of the cards, currency, or chips and is not repaired or remedied within forty-eight hours of activity on the table or four calendar days, the organization shall close the table or limit wagers to two dollars on the table until the equipment is repaired.

8.7. The attorney general's current recordkeeping system must be used unless approval is obtained from the attorney general for use of another recordkeeping system. An organization shall track a dealer's and wheel operator's percent-of-hold performance. Records tracking percent-of-hold must be maintained by the dealer and wheel operator and must include all entries from each site worked by the dealer and wheel operator.

9.8. For a site that requires video surveillance, if percent-of-hold at that site is less than ten percent for twenty-one or less than fifteen percent for paddlewheel for a quarter, a minimum of one hour per week of video surveillance for each active table at that site must be reviewed and documented during the period immediately after the percent-of-hold for the quarter has been determined. The review of video surveillance must be continued for six continuous weeks or until the organization has determined and documented the reason the percent-of-hold is less than ten percent for twenty-one or less than fifteen percent for paddlewheel at that site. The review must be completed by an individual who did not conduct twenty-one or paddlewheel at the site on the shift selected for review.

~~40.9.~~ An organization may purchase or lease a camera, lens, cable, camera dome, digital recording device, time and date generator, and installation services, including moving a camera to another site, from a vendor approved by the attorney general, or any other business entity. If purchasing or leasing the equipment from an approved vendor, an organization shall defer remitting at least fifty percent of the cost or lease price of this equipment to the vendor until the attorney general approves the clarity of the recorded video for a table.

~~44.10.~~ An organization shall provide the attorney general with a sample recording to evaluate. If an organization acquires video surveillance equipment at a new site from another organization, moves a camera or table to another location at the site, or changes video surveillance equipment at a site, the organization shall, within fourteen days, provide the attorney general with a sample recorded video to evaluate. If the quality of the sample recording is not satisfactory, an organization and vendor shall resolve the deficiency and resubmit a sample recording for approval. An organization may buy or lease a qualifying item from another organization.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10, 53-06.1-11

99-01.3-08-06. Chip bank services.

1. An organization shall sell casino chips at a table only for cash, no checks. A chip may be exchanged for a paddlewheel betting chip at a paddlewheel table. Checks may be cashed by a cashier. Cash for chips sold must be kept separate from all other cash until it has been counted. ~~Only a two person audit team may access a drop box before the drop box cash count.~~
2. An organization shall redeem a chip for cash at the value for which it was sold, except when a chip was obtained or used unlawfully. An organization shall adopt a procedure on redeeming a player's chips that ensures that redeemed chips are separated, by value, and counted accurately. A cashier may use a rack to account for one or more sets of twenty chips of the same value. If an organization discontinues twenty-one or paddlewheels at a site, it shall redeem its chips, at its business office or active site, for thirty days thereafter. An employee shall redeem a dealer's and wheel operator's tips through cash on hand. Unless a table has a video surveillance system, a dealer and wheel operator shall redeem the actual chips received as tips. This rule does not prohibit pooling of tips.
3. An employee may not take any chip, including tips, to a location outside the gaming area of a site. A dealer shall redeem tips before leaving a site.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-07. Opening a table and accepting cash and chips.

1. When playing cards are brought to a table, a dealer shall first approve all decks of cards. Decks must be sorted into sequence, by suit and the back of each card inspected to assure that all cards are present and none are marked, taped, bent, crimped, cut, or shaved. After approval, a dealer shall spread the cards face upwards on a table, by deck, according to suit and in sequence within the suit for review by the first player. After a player's review, the cards must be shuffled. If cards are removed from a table for any reason, they must be stored in a safe place and a dealer shall comply with this subsection when the cards are brought back to the table. If a table has been opened and no dealer is stationed at it, a dealer shall remove the

cards from the table or place the cards in a discard holder or dealing shoe and securely cover them.

2. A dealer or shift manager shall inspect each dealing shoe before each day's activity. If a shoe is removed from a table for any reason, it must be stored in a safe place. If a table has been opened and no dealer is stationed at it, a dealer shall securely cover the shoe or remove the shoe from the table.
3. A dealer, upon receiving currency or chips from a player, shall:
 - a. If an organization has not installed a video surveillance system at a site, spread the currency on top of a table in full view of the player and shift manager and state the amount of currency in a voice loud enough to be heard by all players at the table. A dealer shall then take chips from a chip tray, equal in value to the currency, place the chips in a stacked manner in the inner table area with only the dealer's right hand, fan the chips, push the chips to the player and place the currency in a drop box; or
 - b. If an organization has installed a video surveillance system at a site, spread each bill of currency face down and flat, in sequence of denomination, in the inner table area, perpendicular to a chip tray, and momentarily move the dealer's hands away from the currency so the currency is within a camera's view. A dealer shall then take chips from a chip tray, equal in value to the currency, place the chips in a stacked manner in the inner table area with only the dealer's right hand, fan the chips, and momentarily move the dealer's hands away from the chips so the chips are within a camera's view. A dealer shall then restack the chips, and push the chips to a player, and place the currency in a drop box.
 - c. If a chip is received from a player to be exchanged for ~~smaller~~ chips of other value ~~chips~~, the dealer shall place the payout chip in the inner table area at the dealer's left, sort, stack, and fan the chips. If the table has a video surveillance system, a dealer shall momentarily move the dealer's hands away from the chips so they are within a camera's view. A dealer shall then take twenty-one chips from the chip tray, equal in value to the chips, and fan the chips. If the table has a video surveillance system, a dealer shall momentarily move the dealer's hands away from the chips so they are within a camera's view. A dealer shall then restack the chips, push the chips to the player, and place the exchanged chip in the chip tray.

History: Effective May 1, 1998; amended effective July 1, 2002; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-08. Shuffle and cut of the cards.

1. Before starting play, and after each shoe of cards is dealt, a dealer shall, in front of the players, thoroughly shuffle all the cards. As an alternative to a dealer hand shuffling the cards, an organization may use an automatic card shuffling device which complies with section 99-01.3-16-09.3. Then, a dealer shall offer the stack of cards, with backs facing away from the dealer, or concealed by an indicator card to a random player to be cut. A player shall cut the cards by placing a cutting card in the stack at least ten cards in from either end. A dealer shall rotate the opportunity to cut the cards among all the players. If all players decline, a dealer or pit boss shall cut the cards. For a site with a video surveillance system, an organization shall standardize its dealers' procedures for shuffling and cutting cards and may use one or more standard shuffling methods.
2. A dealer shall take all the cards in front (toward the dealer) of a cutting card and place them in back of the stack or take all the cards in back (away from the dealer) of the cutting card and

place them in front of the stack. The cutting card must be at the bottom of the stack. A dealer shall then insert an indicator card about fifty to one hundred cards from the bottom of the stack. The stack is inserted into a dealing shoe facedown. When an indicator card appears at the face of a shoe and enough cards have been dealt to complete the present hand, a dealer shall reshuffle the cards. A dealer may reshuffle the cards only if the indicator card appears, no activity has occurred at the table for a period of time set by the organization, or a table has been temporarily closed with no dealer stationed at the table and it is reopened.

3. After a shuffle a dealer shall remove the first card face downwards and without showing its value, place it in a discard holder (burning a card) located at the dealer's right. Each new dealer at a table shall burn one card before dealing. If a table is open but there is no player, a dealer shall reshuffle the cards or burn one card when a player comes to the table.

History: Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004; October 1, 2006; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-10. Dealing.

1. ~~After a shuffle, a dealer shall remove the first card face downwards and without showing its value, place it in a discard holder (burning a card) located at the dealer's right. Each new dealer at a table shall burn one card before dealing. If a table is open but there is no player, a dealer shall reshuffle the cards or burn one card when a player comes to the table.~~ Only one of three dealing methods may be used at a site:
 - a. Hole-card-no-peek method. A dealer may not look at the face of a hole card until after all cards requested by players are dealt. The cards must be dealt in this order:
 - (1) One card face upwards to each betting space with a wager.
 - (2) One card face upwards or face downwards (hole card) to a dealer.
 - (3) A second card face upwards to each betting space with a wager.
 - (4) A second card face upwards to a dealer if the first card was dealt face downwards; or, a second card face downwards to a dealer if the first card was dealt face upwards.
 - b. No-hole-card method. A dealer may not deal a second card (hole card) to the dealer until after all cards requested by players are dealt. The cards must be dealt in this order:
 - (1) One card face upwards to each betting space with a wager.
 - (2) One card face upwards to a dealer.
 - (3) A second card face upwards to each betting space with a wager.
 - c. Hole-card-with-card-reading-device method. The dealer may use a mechanical or electronic hole card reader and special cards to determine if the dealer's hand is a natural twenty-one after dealing the first two cards to players and the dealer. The cards must be dealt in this order:
 - (1) One card face upwards to each betting space with a wager.
 - (2) One card face upwards or face downwards (hole card) to a dealer.
 - (3) A second card face upwards to each betting space with a wager.

- (4) A second card face upwards to a dealer if the first card was dealt face downwards or, a second card face downwards to a dealer if the first card was dealt face upwards.
 - (5) In case of a card-reading device malfunction on a table, the organization shall use the hole-card-no-peek method or the no-hole-card method of dealing on that table.
2. A dealer shall, starting on the dealer's left, deal the cards by removing them from a dealing shoe with the left hand, turning them face upwards and with the right hand place them on the proper area of a playing surface; however, a dealer may deal cards to the first two betting spaces with the left hand. A player's second card and any hit card must be placed on top of the preceding card covering no more than the lower left-hand quarter of the preceding card, from the dealer's perspective. This rule does not apply to a disabled dealer.
 3. a. If the dealer is using the hole-card-with-card-reading-device method of dealing, the dealer's faceup card is an ace or a ten-count card, and players have placed their insurance wagers, if the dealer's faceup card is an ace, the dealer shall insert the corners of both cards into the reading device to determine if the dealer's hand is a natural twenty-one. If the dealer's hand is a natural twenty-one, the dealer shall play the dealer's hand by immediately:
 - (1) Collecting all player's original wagers and original tip bets, unless a player's original hand is also a natural twenty-one which results in a tie; and
 - (2) Paying any insurance bet at the rate of two to one.
 - b. If the dealer's hand is not a natural twenty-one, the dealer shall collect all insurance bets according to subdivision a of subsection 10 of section 99-01.3-08-11 and continue the play of each player's hand, starting with the player on the dealer's left.

History: Effective May 1, 1998; amended effective July 1, 2010; April 1, 2016; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-11. Playing.

1. A dealer **mayshall** announce the dealer's faceup card one time to all the players at a table. As a prompt for optional wagers (splitting pairs or doubling-down), a dealer may announce the point total of each player's hand.
2. A dealer may not allow a player to touch any cards and may not switch or remove a player's card or chip, pay on a tie, or do anything to alter a fair and legal outcome of a betting hand.
3. If a player has split or doubled-down, or both, a dealer shall play each hand as follows:
 - a. When a player places a wager for a split, a dealer shall split the cards side by side. If a player has also placed a tip bet, a dealer shall assign and reposition the tip bet to the split hand located at the foremost left of a betting space, from the dealer's perspective. Each split hand must be played separately. If aces are split, one additional card must be dealt face upwards to each of the hands and placed at a right angle to the first card dealt, except if an additional ace is drawn it may be split again up to a maximum of four hands.
 - b. A doubled-down hand must be dealt one additional card face upwards and placed at a right angle to the first two cards dealt. However, if a table does not have a video surveillance system, the card may be placed beneath a player's original wager.

4. A dealer may not take a hit card from a dealing shoe nor may a dealer bypass a player unless the player has first indicated the player's request for a hit card or to stand by a distinct hand signal.
5. As a player indicates to stand or draw a hit card, other than on a hand that has split aces or a double-down, a dealer shall deal face upwards an additional card or cards as the player requests. A player is responsible for correctly computing the total card count of the player's hand.
6. If a player did not split, double-down, or place an insurance bet, and busts (a player's total card count exceeds twenty-one), the player loses an original wager and any tip bet. A dealer shall immediately collect and place a player's chips, including any tip bet, in a chip tray and the cards in a discard holder.
7. If a dealer's faceup card is not an ace or a ten-count card and a player split or doubled-down and busts, the player loses the wager for that split or double-down hand and any tip bet assigned to it. A dealer shall immediately collect and place a player's chips in a chip tray and the cards in a discard holder.
8. If an organization uses the hole-card-no-peek or no-hole-card method of dealing, a dealer's faceup card is an ace or a ten-count card and a player split, doubled-down, or placed an insurance bet and busts, the dealer shall gather the cards of that hand and place them outside the betting space. Then, a dealer shall reposition the player's split and or doubled-down wagered chips, in the same betting position, on top of the player's cards of that hand. A tip bet for such a split or double-down hand that busts is lost. A dealer shall immediately place the tip bet chips in a chip tray.
9. If a dealer's faceup card is not an ace or a ten-count card and all players bust, a dealer shall end the round. If a dealer's faceup card is an ace or a ten-count card and all players bust, and no player split, doubled-down, or placed an insurance wager, a dealer shall end the round.
10. If the decisions of all players have been carried out, and a dealer is not using a reading device, a dealer shall turn up the dealer's facedown card (hole-card-no-peek method) or deal a second card face upwards to the dealer (no-hole-card method). However, for the no-hole-card method, a dealer shall remove the dealer's second card from a dealing shoe and, without looking at the value of the card, place it beside the dealer's first card. Then, a dealer shall announce the total card count of the two cards. A dealer shall play the dealer's hand as follows:
 - a. If a dealer's faceup card is an ace and the dealer's hand is not a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect all the players' insurance bet chips, with the dealer's right or left hand, in a sweeping motion, and place them in a chip tray. A dealer may not use the right and left hand at the same time. Then, for all the players' busted hands that have been split, doubled-down, or both, a dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands, and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's insurance bet chips and busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a

dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.

- b. If a dealer's faceup card is a ten-count card and a dealer's hand is not a natural twenty-one, for all the players' busted hands that have been split, doubled-down, or both, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.
 - c. If a dealer's faceup card is an ace, the dealer's hand is a natural twenty-one, and a player has placed an insurance bet, the player wins the insurance wager at the rate of two to one. A dealer shall do the payoff procedure according to subsection 15 or 16. However, if a player's original hand also is a natural twenty-one, subdivision d also applies.
 - d. If a dealer's faceup card is an ace or a ten-count card and the dealer's hand is a natural twenty-one, the organization wins all original wagers and original tip bets, unless a player's original hand also is a natural twenty-one which results in a tie (push). All other players lose.
 - e. If a player has doubled-down or split against a dealer's faceup card of an ace or a ten-count card and the dealer's hand is a natural twenty-one, only the player's original wager is lost unless the player's original hand also is a natural twenty-one which results in a tie. All separate splitting and doubling-down wagers are voided. A dealer shall return the chips of the separate wagers to the players.
 - f. If the count of a dealer's hand is sixteen or under, the dealer shall draw a hit card until the count exceeds sixteen. An additional card must be dealt face upwards to the immediate right of a dealer's first two cards dealt, from the dealer's perspective, and the dealer shall announce the total card count.
 - g. If the count of a dealer's hand exceeds sixteen but does not exceed twenty-one, the dealer shall stay (not draw a hit card). At its option, an organization may permit a site to allow a dealer to take a hit card when the dealer has a soft seventeen (ace card and a six). If the organization allows this option, it must be posted at the site. If a dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, twenty, or twenty-one can be obtained by counting the ace as an eleven, a dealer shall value the dealer's hand as such and stay. A dealer shall announce the final total card count of the dealer's hand.
 - h. If a dealer's hand busts, the remaining players with active hands win.
11. If a player's original hand is a natural twenty-one and a dealer's faceup card is not an ace or a ten-count card, the player's hand wins and is paid off at a rate of three to two, unless the player chooses to double-down. A dealer's chip payoff on a player's wager may occur immediately or when the dealer, in the order of hands, comes to that player's hand.

12. A wager is won or lost by comparing the total card count of each player's hand to the dealer's hand. A dealer or player with the highest total card count wins. Wagers, including tip bets, are paid off at an equal amount according to subsection 15 or 16. All ties are a push - no payoff is made, including on a tip bet.
13. If a player's hand loses against a dealer's hand, an organization wins any tip bet. A dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of adjacent losing hands with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. A dealer may, at an organization's option that is consistently applied at a site, collect the chips of losing hands with only the dealer's right hand, on a hand-by-hand basis. When a tie hand is reached, the dealer shall recognize that hand with a tap on the tabletop and announce that it is a push. When a winning hand is reached, a dealer shall place any previously collected chips in a chip tray and do the payoff procedure for adjacent winning hands according to subsection 15 or 16. When a losing hand is again reached, the dealer shall repeat the collection and payoff procedure until all losing wagers have been collected and all winning hands have been paid. The dealer shall then collect all the remaining cards according to subsection 17.
14. If a player's hand wins against a dealer's hand and the player placed a tip bet, the dealer wins the tip bet and the one-to-one payoff from a chip tray according to subsection 15 or 16.
15. If a player's hand wins against a dealer's hand and a table does not have a video surveillance system, the payoff procedure is:
 - a. Normal hand. A payoff chip must be placed beside the original wagered chip in a betting space.
 - b. Split hand. The payoff chip must be placed beside the wagered chips in a betting space.
 - c. Double-down hand. The payoff chips must be placed beside the two wagered chips in a betting space.
 - d. Insurance bet. A payoff chip must be first placed beside the insurance bet chip, fanned, then placed on top of the insurance bet chip and the chips pushed to a player.
 - e. Natural twenty-one. The payoff chips must be pyramided with the higher value chip placed beside the original wagered chip in a betting space and the smaller value chip placed on top over the center of the other two chips.
 - f. Tip bet. A payoff chip must be placed beside the tip bet chip and any double-down chip in the inner table area. Then, a dealer shall place the chips directly in a tip receptacle.
16. If a player's hand wins against a dealer's hand and a table has a video surveillance system, the payoff of each winning hand must be done on a hand-by-hand basis. The payoff procedure is:
 - a. A dealer shall fan all of a player's wagered chips toward the dealer or side with only the dealer's left hand. A dealer may, at an organization's option that is consistently applied at a site, fan all of a player's wagered chips toward the dealer or side with only the dealer's right hand. However, for a site that has a pit boss on duty and the organization requires a double-down wager to equal the original wager, a dealer may, for a player who has placed a split bet or double-down bet, or both, fan only one of the player's stacks of wagered chips. A dealer shall reposition a player's tip bet chips in the inner table area with the dealer's left hand and fan the chips. A dealer may, at an organization's option that is consistently applied at a site, fan all the players' tip bets after the payoff procedure has been done on all winning players' hands. However, if a player's bet exceeds five dollars, the dealer shall separate the player's chips, by value, fan them in sets of five

chips, and then fan any remaining chips. A dealer shall, with the dealer's right hand, take chips from the chip tray, equal in value to the player's wagered chips (not tip bet chips), place the payoff chips beside the wagered fanned chips, and fan the payoff chips toward the side or toward the dealer, and move the dealer's hands away from the chips. However, if the prize payoff exceeds twenty casino chips of the same value, the dealer may use a rack to account for one or more sets of twenty chips and fan the remaining chips. A dealer shall repeat this procedure for each separate winning hand.

- b. After the payoff procedure has been done on all winning players' hands and the tip bet chips have been fanned, a dealer shall, with the dealer's right hand, take chips from the chip tray equal in value as the tip bet chips, place the payoff chips beside the fanned wagered tip bet chips, and fan the payoff chips. A dealer shall repeat this procedure for each separate winning tip bet. Then, a dealer shall move the dealer's hands away from the chips. After a dealer has picked up the cards according to subsection 17, the dealer shall place the chips directly in a tip receptacle.
17. At the end of a round of play, a dealer shall pick up all the cards remaining on the playing surface so that they can be played back to recreate each hand, starting with the player to the dealer's right and moving to the left around the table. After the cards have been collected in a sweep or hand by hand, a dealer shall pick up the dealer's cards against the top of the players' cards and place them in a discard holder.
 18. If a table has a video surveillance system, a dealer's shift ends, and the dealer:
 - a. Does not desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view. A dealer shall then take the tip receptacle and leave the table.
 - b. Does desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall take all the chips out of the tip receptacle. A dealer shall place the chips in the inner table area at the dealer's left; sort, stack, and fan only the chips to be exchanged; take chips from a chip tray equal in value to the fanned chips; place the replacement chips at the dealer's right; sort, stack, and fan the chips, momentarily move the dealer's hands away from the chips so the chips are within a camera's view; place the exchanged chips in a chip tray; then place the replacement chips and unexchanged chips in a tip receptacle. A dealer shall then momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view, take the tip receptacle, and leave the table. As an option, a dealer for the next shift may exchange the present dealer's tips.
 19. An organization may adopt a policy to allow a dealer, when a player leaves a table, to exchange two or more of the player's casino chips for higher value chips provided that the dealer first asks the player's permission, the player agrees, and the dealer announces the value of chips being exchanged.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-13. Disclosure.

The following rules and notice must be posted or made available to players [in the area where twenty-one activity is conducted](#). If made available to players, the rules and notice must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:

1. House rules:

- a. Minimum and maximum betting limit; and
 - b. Use Hole-Card-No-Peek method of dealing or use Hole-Card-with-Card-Reading-Device method of dealing or use No-Hole-Card method of dealing.
2. Player rules:
- a. Must compute the card count of the player's hand;
 - b. Must be twenty-one years of age or older;
 - c. Hand signals must be used;
 - d. No touching of cards;
 - e. Two betting spaces maximum;
 - f. No side bets;
 - g. No payoff on tie counts;
 - h. Splitting on any pair and two 10-count value cards and limited to a maximum of four hands per betting space;
 - i. Doubling-down on the first two cards dealt or the first two cards of any split hand, except on split aces;
 - j. Double-down bet must equal the original wager or double-down bet may be equal to or less than the original wager;
 - k. Insurance not permitted or insurance permitted - pays two to one;
 - l. Tip betting permitted or tip betting not permitted; and
 - m. Doubling-down on tip bets permitted - must equal the original tip bet or doubling-down on tip bets permitted - may be equal to or less than the original tip bet or doubling-down on tip bets not permitted.
3. Notice: If a person knowingly uses a fraudulent scheme or technique to cheat or skim involving twenty-one, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2012; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-14. Drop box cash count.

1. A drop box that has been used must be removed from a table by the end of the day's activity. If a drop box is removed from a table and the cash is not counted immediately, the drop box must be transported by the shift manager and, if there is more than one employee on duty, escorted by an employee to a safe storage place. The cash must be removed from the drop box before the drop box can be used for another day's activity. An empty drop box may be stored on a table or in a safe storage place.
2. A drop box must be opened by a two-person count team. The persons shall be independent of each other. A count team may be an independent person and a gaming employee; two representatives of a financial institution, accounting firm, security agency, or security

company; two nongaming employees; or two gaming employees provided that one of the gaming employees did not conduct games at the same site on the day of the gaming activity and day of the count. A count team may not be two persons who have a direct supervisor and subordinate relationship and may not be a common household member, spouse, child, parent, brother, or sister of the other count team member, except when using an independent contractor. A count team member may not be the person responsible for auditing the twenty-one activity.

3. The key to the lock securing the contents of a drop box must be controlled by one count team member who may not access the drop box unless both count team members are present. If there are two separate locks that secure the contents of a drop box, the key to the second lock must be controlled by the other count team member.
4. Each person shall independently count the drop box cash in the presence of the other person and resolve any difference between the two counts. Documentation of the count must be initialed and dated by both count team members.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-16. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For each day's activity:
 - a. The starting and ending cash and chip banks and IOU records according to section 99-01.3-03-06;
 - b. Drop box cash and values of fill and credit slips of each table;
 - c. Cash profit as defined in subdivision j of subsection 89 of section 99-01.3-02-01;
 - d. Daily surveillance review log;
 - e. For tournament play, the fees; rebuys; add-ons collected; name of each player, signature or initials, and date of the employee who collected the fee;
 - f. For tournament play, prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
 - g. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all twenty-one activity for a quarter must reconcile to the tax return; and
 - h. For a video surveillance system, dealer percent-of-hold information and video review documentation must be retained for one year from the end of the quarter of the activity.
2. Inventory records according to subsection 65 of section 99-01.3-03-09.
3. Ideal cash bank master records according to subsection 54 of section 99-01.3-03-09.
4. An organization using a combined cash bank for twenty-one and paddlewheel at a site shall allocate the cash long or short of the combined cash bank to twenty-one.

5. Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
6. The count and reconciliation of cash banks and casino and betting chips according to subsections ~~5, 6, and 7~~4, 5, and 6 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-09

99-01.3-09-01. Poker.

An organization with a restricted event permit may conduct poker during one event per year. Poker may only be conducted by ana licensed organization on two occasions per fiscal year, July first through June thirtieth. Each of the two poker occasions are limited to a seventy-two-hour period. Poker is a card game dealt by one dealer. For a tournament, an organization shall charge each player an entry fee. ~~The~~For each tournament conducted, the total fees ~~for a tournament~~ may not exceed three hundred dollars per player ~~and include, which includes~~ the buy-in or entry fee, plus any ~~rebuy or add-on~~ rebuis, add-ons, and bounties. ~~The total fees collected and are considered gross proceeds.~~ Satellite ~~Each tournament also may have qualifying satellite tournaments may beat a site~~ conducted in conjunction with ~~athe main~~ tournament and a separate fee not to exceed. Total fees of up to three hundred dollars per player also may be ~~collected and are~~ recharged for qualifying satellite tournaments. This fee also is considered ~~part of~~ gross proceeds for the tournament. Total prizes awarded for ~~aany one~~ tournament, including any satellite tournaments, may not exceed ninety percent of the gross proceeds for that tournament. The organization must complete the poker recordkeeping as required by section 99-01.3-09-07 for each tournament conducted during a poker occasion. The recordkeeping may not be combined for multiple tournaments conducted during the seventy-two-hour poker occasion. A nontournament occasion and a side game are restricted to a twenty-four hour-period during the poker occasion. For nontournament activity, an organization shall charge each player a fee not to exceed two dollars per one-half hour of playing time, collected in advance. The maximum single bet is one dollar and not more than three raises, of not more than one dollar each, may be made among all the players in a betting round. An organization employee shall be present to manage and control all poker activity.

After players receive their starting (hole) cards and after each round of new cards, there is a betting round. A player bets on the cards (hand) the player holds. All wagers are placed in the center of the table and referred to as the pot. Each betting round, a player decides whether to continue by calling or raising the bet. After all the dealing of cards and betting has occurred and there are two or more players still in contention for the pot, there is a showdown to determine which player has the best hand. The object is for the player to win the pot by making a bet no other player is willing to match or for the player to have the most valuable hand. A winner is determined by the ranks and combinations of players' cards.

History: Effective May 1, 1998; amended effective July 1, 2002; July 1, 2010; July 1, 2012; April 1, 2016; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-09-06. Disclosure.

The following rules must be posted or made available to players in the area where poker activity is conducted. If made available to players, the rules must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:

1. House rules:
 - a. Must use one deck of cards which is dealt out of the hand;
 - b. Must use a cut card to conceal the bottom card of the deck;
 - c. May allow a blind bet and set a minimum table limit;
 - d. May allow a minimum ante;
 - e. May allow a maximum of three raises per betting round; and

- f. Must limit each raise to an amount equal to or greater than the original bet; however, each raise must be equal to or greater than the original bet of that betting round.
2. Player rules:
 - a. Must be twenty-one years of age or older;
 - b. No side bets or credit play is allowed;
 - c. Chips must remain visible on the table throughout the event;
 - d. The use of any electronic device for communication at the table is prohibited while the player has a live hand;
 - e. The placement of any electronic device on the table is prohibited; and
 - f. Ethical play: Any player who soft plays a hand shall be penalized. The penalty may include either chip forfeiture or disqualification or both. Any player involved in chip dumping and other forms of collusion shall be disqualified.

History: Effective April 1, 2016; amended effective July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.2

99-01.3-09-07. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported:

1. For each poker occasion:
 - a. The starting and ending cash on hand and chips according to section 99-01.3-03-06;
 - b. For nontournament play and a side game, the fees collected for each one-half hour interval on each table; number of players; time each fee is collected; and the name, signature, and time worked of the employee who collected the fee;
 - c. For tournament play, including satellite games; the fees; rebuys; bounties; add-ons collected; name and address of each player; signature or initials; and date of the employee who collected the fee;
 - d. For tournament play, including satellite games, prize register according to section 99-01.3-03-07, and record of win according to section 99-01.3-03-08;
 - e. Cash profit as defined in subdivision k of subsection ~~89~~ of section 99-01.3-02-01;
 - f. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all poker activity for a quarter must reconcile to the tax return;
 - g. A copy of the tournament rules for each poker occasion;
 - h. Receipts for transferred satellite buy-in prize; and
 - i. A copy of the tournament schedule according to subsection 1 of section 99-01.3-09-05.
2. Ideal cash bank master records according to subsection ~~54~~ of section 99-01.3-03-09.

3. Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
4. The count and reconciliation of cash banks according to subsections [54](#) and [76](#) of section 99-01.3-03-09.

History: Effective April 1, 2016; amended effective July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-10

99-01.3-10-01. Calcutta.

A "calcutta" is a sporting event in which players wager at an auction on the competitors. A sporting event is a competitive sport involving physical skill or endurance and scores a person's physical ability. The conduct of a calcutta is the auction process. An auction pool is comprised of the wagers paid by players who offered the highest bids on the competitors. The auction pool is distributed to the player who wagered on the winning competitor. The winning competitor may be one competitor, a team of competitors, or ranked competitors. A competitor may not be an animal and wagers may not be placed on animals. The payout of the cash prize to a winning player is based on a predetermined percentage of the auction pool, which may not exceed ninety percent. Only cash prizes may be awarded.

1. A calcutta may only be conducted for a professional or amateur sporting event held in North Dakota, but not for an elementary, secondary, or postsecondary education sporting event. An organization may conduct more than one calcutta on the same sporting event. More than one organization may independently conduct a calcutta on the same event.
2. An organization shall acquire a calcutta board from a distributor and complete on it the sporting event, date of the sports event, and manner of distributing the auction pool as a prize. The requirements of the players must be posted or made available to the players on the site.
3. Each competitor in a sporting event shall be identified before the auction begins. A competitor may also be a player who may wager on oneself. A competitor may wager on another competitor.
4. Each competitor shall be eighteen years of age or older to be eligible to be listed on a calcutta board. Each eligible competitor shall be offered through an auction to prospective players. An organization may require that all eligible competitors be bid on and may set a minimum bid. A player who offers the highest bid for a competitor by a verbal, sealed, or open bid wagers on that competitor. A player may wager any amount and buy more than one competitor. A competitor may be auctioned off only to one player. An organization may not bid on a competitor.
5. An open bid enables a potential player, during a certain time, to write the player's name and bid for a competitor on a register assigned that competitor. Each successive potential player interested in that competitor shall write the player's name and bid, of an amount higher than the previous bid, on the register. When the time period ends, the last player listed on the register wagers the amount bid on that competitor.
6. An organization shall conduct an auction at its site that may be where the sporting event is held. A player shall be present to bid.
7. Before an auction, an employee shall:
 - a. Verbally announce the predetermined percentages of the auction pool that will be paid to a winning player and retained by an organization. The amount a player may win depends on the total amount of the auction pool and not on any odds; and
 - b. Complete for each line on a board a sequential number starting with the number one and a name of a competitor.
8. The sequence of a verbal bid auction must be determined by a random drawing of the numbers assigned each line.
9. If a competitor is not bid on by a player, an organization may sell the competitor by:

- a. If there is more than one competitor not bid on, placing the competitors in one or more groups and auction a group as one competitor; or
 - b. Allowing a competitor to purchase oneself for a predetermined minimum wager.
10. After an auction, an employee shall complete this information for each line on a board and total the amounts wagered:
 - a. Full name and address of the player who bought the competitor; and
 - b. Amount wagered by the player.
 11. If a competitor was bought by a player and does not compete in the event, an organization shall refund the wagered amount to the player and adjust the prize payout.
 12. After a sporting event, an employee shall complete on the board, for each winning player, the amount of the auction pool won. A winning player is the player who wagered on the competitor who won the event. An organization may award the prize to a winning player where the event is held. If an eligible competitor was not bought by a player and wins or places in the event, the organization shall retain the prize that would have been awarded on the competitor. If an ineligible competitor wins or places in the event, the organization shall award the prize that would have been awarded on the competitor to the next highest ranked eligible competitor.
 13. An organization shall make a good-faith effort to contact a winning player to award a prize. If a prize is unclaimed for thirty days following the notification or a player attempts to falsify or falsifies a record of win, the prize is forfeited.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.3

99-01.3-10-02. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported:

1. For each calcutta:
 - a. A calcutta board with the state gaming stamp affixed indicating the winning competitor and player;
 - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
 - c. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
 - d. Cash profit as defined in subdivision I of subsection [89](#) of section 99-01.3-02-01; and
 - e. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all calcuttas conducted for a quarter must reconcile to the tax return.
2. Inventory records according to subsection 1 of section 99-01.3-03-09.
3. Ideal cash bank master records according to subsection [54](#) of section 99-01.3-03-09.

4. Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
5. The count and reconciliation of calcutta boards and cash banks according to subsections 1, ~~54~~, and ~~76~~ of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-11

99-01.3-11-02. Paddlewheels - Excluding the use of a table.

This section applies to the method of paddlewheels described by subsection 1 of section 99-01.3-11-01.

1. All paddlewheel tickets of a card must be preprinted and contain one or more numbers or symbols corresponding to a paddlewheel. A number or symbol cannot be repeated on any of the tickets of a card number. A ticket must have a game serial number corresponding to the number printed on the ticket card's stub. A master flare for a series of paddlewheel ticket cards must state the type of paddlewheel tickets, cost per ticket, range of card numbers, have a state gaming stamp affixed to it bearing the card number of the lowest-numbered ticket card, and be posted.
2. The maximum price per ticket is two dollars. All the tickets of a series of paddlewheel ticket cards must be sold for the same price and the tickets cannot be discounted. A person may not be required to buy more than one ticket. All tickets must be sold on a site the day the game is conducted. All the tickets of a card must be sold before a spin. Otherwise, an employee shall refund the gross proceeds in exchange for the players' unplayed tickets.
3. A winner must be determined by spinning a paddlewheel. An organization may spin a paddlewheel multiple times to award multiple prizes for one paddlewheel ticket card. A paddlewheel must make at least four revolutions. Otherwise, the spin is void and the paddlewheel must be spun again.
4. No cash prize may be a variable multiple of the price of a ticket. No cash prize or the retail price of a merchandise prize for one winning ticket may exceed one hundred dollars. After a prize payoff, an employee shall record the date, card number, and cash prize amount or cost and description of a merchandise prize and retain the winning ticket.
5. All paddlewheel ticket cards of a series related to the same master flare must be reported on the tax return in the quarter in which the series was first played. An organization may not carry over a partial series of paddlewheel ticket cards to another quarter. Any cards of a series which remain unsold during a quarter when other cards of that series were sold must be retained as part of the accounting records and cannot be used or disposed.
6. The following rules and policy must be posted or made available to players in the area where paddlewheel activity is conducted. If made available to players, the rules and policy must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
 - a. A player may not bet tickets that exceed a value of twenty dollars for one spin;
 - b. A paddlewheel must make at least four revolutions;
 - c. Whether a player is or is not required to be present when the paddlewheel is spun to win;
 - d. If a player is not required to be present, the time limit for the winning player to claim the prize; however, the limit cannot exceed one hour from the time of the spin; and
 - e. If a prize is not claimed, an organization shall conduct one or more additional spins until the prize is claimed.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2012; April 1, 2016; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.4

99-01.3-11-03. Paddlewheel, table, chips, and video surveillance system.

1. A paddlewheel is a round mechanical vertical wheel, at least thirty inches in diameter, and may be divided into a maximum of five concentric circles. The outer circle must contain at least forty numbers or symbols. A paddlewheel may have house numbers or symbols for an optional odd or even bet. Each inner circle may contain up to one-half of the number of numbers or symbols as that circle's adjacent outer circle. The numbers and symbols may repeat on a circle. Each circle must be divided into equally spaced sections, be a different primary color, and correspond to the colored numbers or symbols of a table playing surface. The colored numbers or symbols of all concentric circles must be at least five-eighths of one inch in height.
2. A peg must protrude, on the circumference of a paddlewheel, between each section of the outside circle. A pointer must be positioned above a paddlewheel. It is used to stop a spin of a paddlewheel and determine the winning colored number or symbol.
3. A table must have:
 - a. A chip tray and a rail for holding a player's chips;
 - b. A playing surface which must be permanently imprinted with colored numbers or symbols of at least one and one-half inches in height relating to each circle of a paddlewheel. A table may have spaces for various wagers, including sets of numbers, colored numbers, symbols, and "ODD" and "EVEN" bets;
 - c. Either a mirror to reflect or a color video camera and monitor to display the winning colored number or symbol on the paddlewheel; and
 - d. A table must have a "drop box" that meets the specification of subsection 5 of section 99-01.3-15-02. A "drop box" must have a money plunger which must remain in the slot unless the plunger is used.
4. An organization shall issue solid color-coded sets of chips for betting purposes. No betting chip can be the primary color of mustard yellow. The number of different sets and number of chips within each set is based on an organization's discretion. Each chip must be permanently impressed, engraved, or imprinted on one side with an organization's name and the other side may have a stated value of one dollar. The name may be represented by a unique identification that differentiates an organization's chips from other organizations' chips. Each chip is valued at one dollar. An organization may issue casino chips in values of one dollar, two dollars, five dollars, twenty-five dollars, and one hundred dollars for paying a winning bet or exchanging a betting chip. A casino chip must meet the specification of subsection 3 of section 99-01.3-08-03.
5. An organization shall have a picture-in-picture or simultaneous recording video surveillance system on a table and paddlewheel. The system must meet the requirements prescribed by ~~subsections 1, 2, 4, 5, 6, 7, 8, 9, 10, and 11~~ of section 99-01.3-08-04.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.4

99-01.3-11-04. Opening and closing a table, number of employees, chip bank services, procedure for accepting currency and chips, and drop box.

1. To open a paddlewheel table, an employee shall inspect each peg and the pointer of a paddlewheel for uneven wear, immediately replace any worn peg or pointer, and evaluate the balance of a paddlewheel.
2. An organization may not conduct paddlewheels unless two employees are on duty at the site.
3. A fill and credit slip must be prepared and used according to section 99-01.3-08-05. An organization shall perform chip bank services according to section 99-01.3-08-06. An organization may account for the games of paddlewheels and twenty-one separately and, if the activity is separately recorded, shall use casino chips prescribed by the attorney general.
4. A wheel operator, upon receiving currency from a player at a table, shall spread each bill of currency facedown and flat, in sequence of denomination, in the inner table area, perpendicular to a chip tray, and momentarily move the wheel operator's hands away from the currency so it is within a camera's view. A wheel operator, upon receiving a casino chip from a player at a table to be exchanged for a betting chip, shall place the chip in the inner table area at the ~~dealer's~~wheel operator's left and sort, stack, and fan the chips. However, a wheel operator may use a rack to account for one or more sets of twenty chips of the same value. A wheel operator shall then take betting chips from the chip tray, equal in value to the currency or casino chip, fan the betting chips, and momentarily move the wheel operator's hands away from the betting chips so they are within a camera's view. A wheel operator shall then restack the betting chips, push the betting chips to the player, and place the currency in a drop box or place the casino chip in the chip tray, or both.
5. After a day's activity, an employee shall transport a drop box from a table, store it, and count drop box cash according to section 99-01.3-08-14.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010; April 1, 2016; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-11-05. Conduct and play.

1. An organization may limit the number of players and may require a minimum number of players to open a table.
2. A player shall buy a betting chip with currency or may exchange a casino chip for a betting chip. Only a betting chip can be used to place a bet.
3. The maximum betting limit of a player for each spin is twenty dollars. Each chip is a separate chance to win. Unless an organization has a restrictive policy, a player may bet more than one chip on the same colored number or symbol for a spin. To bet, a player shall place a chip on the betting layout of a table. If a player's total bet exceeds a value of twenty dollars or exceeds an organization's maximum wager on a spin, the bet is void and the organization shall return the player's chips to the player. A player may not place a tip bet for a wheel operator.
4. After all the players have bought a betting chip and before a paddlewheel is spun, a wheel operator shall announce that the players' bets for the next spin must now be placed. A wheel operator may place a chip for a player if the wheel operator first states, in a voice loud enough to be heard by all the players at a table, that the player is being assisted. When a wheel operator has determined that no other person desires to bet, the wheel operator shall announce bets closed. Thereafter, a player may not bet or touch any placed betting chip or obstruct the view of the playing surface until after a wheel operator pays off all winning

wagers. A wheel operator shall double spin a paddlewheel by pulling it in a downward or upward direction and releasing it. While the paddlewheel is in motion, a wheel operator shall again pull it in a consistent downward or upward direction. A paddlewheel must rotate at least four full unrestricted revolutions. Otherwise, the spin is void and a paddlewheel must be spun again.

5. When a paddlewheel stops, a wheel operator shall announce the winning colored number or symbol in a tone of voice loud enough to be heard by all the players at a table. The announcement must be in sequence of the outermost circle first to the innermost circle last. A wheel operator shall first remove all losing betting chips from the table and place them in the chip tray. Then, a wheel operator shall pay off the winning betting chips in the sequence of the bets that are most accessible to the players first and to the bets that are least accessible to the players last.
6. To pay off a winning bet, a wheel operator shall fan all of a player's betting chips toward the wheel operator or side. A wheel operator shall take betting chips of the same color as the winning chip or casino chips, equal to the prize amount of the winning bet, from the chip tray, place the betting or casino chips in a stacked manner beside the wagered fanned betting chips, fan the payoff chips toward the wheel operator or side, and momentarily move the wheel operator's hands away from the chips so they are within a camera's view. However, if the prize payout equals or exceeds twenty betting or casino chips of the same value, the wheel operator may use a rack to account for one or more sets of twenty chips and fan the remaining payoff chips.
7. A tip for a wheel operator must be made with a betting or casino chip. If a tip is made with a betting chip, a wheel operator shall immediately exchange the betting chip for a casino chip in the inner table area, momentarily move the wheel operator's hands away from the chip so it is within a camera's view, place the betting chip in the chip tray and casino chip in the tip receptacle. When the wheel operator's shift ends, the wheel operator shall take the tip receptacle and leave the table.
8. If a player desires to redeem a betting chip, an organization shall exchange the betting chip for a casino chip at the paddlewheel table. A player may redeem a casino chip with the ~~cash~~ **bank** cashier or use it in the game of twenty-one.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; October 1, 2006; April 1, 2016; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.4

99-01.3-11-06. Disclosure.

1. The following rules and notice must be posted or made available to players [in the area where paddlewheel activity is conducted](#). If made available to players, the rules and notice must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
 - a. A player may not bet chips that exceed a value of twenty dollars for one spin.
 - b. A player shall bet by placing a betting chip properly on the betting layout.
 - c. A player may not touch a betting chip after the wheel operator announces "bets closed" or obstruct the view of the playing surface until after a wheel operator pays off all winning wagers.
 - d. A paddlewheel must make at least four revolutions.

- e. If a pointer stops on top of a peg, the number preceding the peg is the winning number.
 - f. A winning odd or even bet is determined by a winning number of only the designated colored circle. However, a player loses all odd and even bets if the pointer stops on a designated house number. This must be posted or made available to players if an odd or even bet is accepted.
 - g. If a player stops playing and has an unused betting chip, the player shall exchange the betting chip for a casino chip through the wheel operator before the player leaves the table.
2. Prize information must be posted, made available to players, or stated on a table playing surface. The information must reference each differently colored number or symbol, including an optional odd or even bet, and state each prize payoff. The payoff is the relationship of the prize to a winning betting chip. The payoff must be stated as "_____ to _____" or "_____ for _____". For example, for a red-colored number or symbol which pays forty dollars for a winning betting chip, the information must reference the red-colored number or symbol and state the payoff as "EXACT NUMBER RED 40 to 1".
 3. A notice that if a person knowingly uses a fraudulent scheme or technique to cheat or skim involving paddlewheels, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; October 1, 2006; April 1, 2016; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.4, 53-06.1-16

99-01.3-11-07. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For paddlewheel activity described by subsection 1 of section 99-01.3-11-01:
 - a. For each day's activity, the starting and ending cash banks and IOU records according to section 99-01.3-03-06;
 - b. For each ticket card of each series of paddlewheel ticket cards:
 - (1) Date conducted, card number, cash prize amount or cost and description of a merchandise prize;
 - (2) All winning tickets and unsold ticket cards which must be retained for one year from the end of the quarter in which the activity was reported on a tax return; and
 - (3) The flare with the state gaming stamp affixed;
 - c. Inventory records according to subsection 1 of section 99-01.3-03-09;
 - d. The count and reconciliation of each series of paddlewheel ticket cards according to subsections 1 and [76](#) of section 99-01.3-03-09;
 - e. Prize register according to section 99-01.3-03-07; and
 - f. Purchase invoice or receipt documenting the cost and description of a merchandise prize.

2. For paddlewheel activity described by subsection 2 of section 99-01.3-11-01:
 - a. The starting and ending cash and chip banks and IOU records according to section 99-01.3-03-06;
 - b. Drop box cash and values of fill and credit slips;
 - c. Daily surveillance review log;
 - d. Wheel operator percent-of-hold information and video review documentation must be retained for one year from the end of the quarter of the activity;
 - e. Inventory records according to subsection 65 of section 99-01.3-03-09;
 - f. An organization using a combined cash bank for twenty-one and paddlewheel at a site, shall allocate the cash long or short of the combined cash bank to twenty-one; and
 - g. The count and reconciliation of casino and betting chips according to subsections 65 and 76 of section 99-01.3-03-09.
3. For all paddlewheel activity:
 - a. Cash profit as defined in subdivisions j and m of subsection 89 of section 99-01.3-02-01; and
 - b. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. For paddlewheel activity described by subsection 1 of section 99-01.3-11-01, a summary must be completed for each series of paddlewheel ticket cards. The summaries of all paddlewheel activity for a quarter must reconcile to the tax return.
4. Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
5. Ideal cash bank master records according to subsection 54 of section 99-01.3-03-09.
6. The count and reconciliation of cash banks according to subsections 54 and 76 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-12
PULL-TAB~~PULL-TAB~~ **DISPENSING DEVICES**

Section

- 99-01.3-12-01 Use [Repealed]
- 99-01.3-12-02 Use and Requirements of an Organization
- 99-01.3-12-03 Requirements of a Bar
- 99-01.3-12-04 Requirements of a Bar and an Organization
- 99-01.3-12-05 Recordkeeping

99-01.3-12-02. Use and requirements of an organization.

1. A licensed organization may operate a ~~pull-tab~~pull-tab dispensing device when the organization's employee is on duty and may have a bar employee redeem a winning pull tab when the organization's employee is or is not on duty.
2. If a distributor's or manufacturer's security seal is broken on a deal's container before the deal is used, an organization shall return the deal to the distributor.
3. The following rules must be posted or made available to players. If made available to players in the area where pull-tab dispensing device activity is conducted, the rules must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
 - a. Restricting access to or delaying using credits on a device is prohibited;
 - b. A winning pull tab must be redeemed within fifteen minutes;
 - c. A pull tab cannot be redeemed if it has been taken from the gaming area; and
 - d. If a person knowingly solicits, provides, or receives any inside information, by any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both; ~~and~~
 - ~~e. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.~~
4. An organization shall maintain custody of all keys to a device.
5. An organization shall withdraw currency from a device within a seven-calendar-day interim period.
6. An organization shall use the current recordkeeping system unless approval is obtained from the attorney general for use of another system.
7. An organization shall have a rental agreement conforming to section 99-01.3-02-06.
8. An organization shall maintain an access log prescribed by the attorney general. A person who accesses a device for any reason shall record the access and initial the log. When a person does a test vend which affects the accounting meters or a test validation of currency, the person shall record the value of pull tabs and currency validated. An organization shall retain the log in a device during the quarter of activity.
9. An organization may provide a bar with a temporary loan to enable a bar employee to redeem a winning pull tab. A loan and any increase in the loan must be made by check payable to the bar and be interest free. An organization may not access, count, or take custody of the loaned money. The duration of the loan must be until an organization discontinues conducting pull

tabs at a site through a device. When the bar repays the loan, the organization shall deposit the funds in its gaming account and the deposit slip must reference the site, source of funds, and amount. The amount reimbursed to a bar must equal the value of redeemed winning pull tabs which the bar provides an organization. An organization employee may not use a bar's cash on hand for redeeming a winning pull tab.

10. An organization may not provide an independent service technician a key to access a device regardless if the device is leased.
11. If a theft of currency occurs, an organization shall record the currency and ~~pull-tab~~pull-tab accounting meters or print a cash withdrawal report and audit the game. The organization shall provide a copy of all of this information to a local law enforcement agency and the attorney general.
12. When a game is closed:
 - a. The game must be reported on a tax return for the site at which it was closed;
 - b. An employee shall buy back all remaining redeemed winning pull tabs from a bar; and
 - c. If the game has unsold pull tabs, these cannot be put back into play.
13. An organization or employee may not:
 - a. Modify the assembly or operational functions of a device;
 - b. Use or continue to conduct a deal of pull tabs after being notified by a distributor of a ban or recall of the deal;
 - c. Designate a pull tab to entitle a player who buys it with a prize provided by a bar or distributor; or
 - d. Intentionally test vend currency or pull tabs to synchronize nonresettable accounting meters.
14. A game must be conducted and played through a device as follows:
 - a. The deals must be identical, except for a game serial number and color of the pull tabs;
 - b. An employee shall securely attach a master flare to the interior or exterior of a device, or on an adjacent wall, so the flare's information is visible to players. When a deal is added, the deal's flare may be retained in a device or at an organization's office;
 - c. An employee shall place at least one complete and one-third to one-half of a second deal in a device at the same time at the start of a game. The remaining pull tabs of any partial deal must be stored onsite and added to the game before any additional deals may be added. If during the quarter a deal is added to a game and the complete deal's tickets will not fit in a device, any remaining pull tabs of the partial deal must be stored onsite and added to the game before any additional deals may be added;
 - d. At the start of a game the pull tabs must be randomly placed in all the stacking columns. To add pull tabs to a game, an employee shall first add any remaining pull tabs of a deal previously partially placed in the device or pull tabs of a new deal by randomly mixing these pull tabs with the pull tabs in the device;
 - e. If a deal is to be added to a game and an organization does not have a deal to add, the organization shall temporarily suspend the game until it procures a deal. However, if the

organization is unable to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;

- f. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter or if a site has not previously had gaming, a game may be closed anytime if all top tier winning pull tabs have been redeemed;
 - g. Except as provided by subdivision h, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and a game has been in play for twenty-five consecutive calendar days;
 - h. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed or low-level switches in all but two columns of a device have been triggered, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period. When a game is being closed, an employee shall post a sign stating that the game is being sold out;
 - i. If the percent-of-accuracy of all the games involving a device for a site for the previous quarter was less than ninety-eight and one-half percent, and a cash shortage of more than one hundred dollars, an employee who did not conduct the game, have sole access to the games in play, cash banks, and receipts or cash profit for the games, shall do a weekly interim audit of the games at the site for up to twelve continuous weeks or until the organization determines, resolves, and documents the cause. One of the weekly interim audits may be the audit required by subsection 7 of section 99-01.3-03-10. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general. However, if games involving a device are conducted without a bar employee redeeming a winning pull tab, ~~pull tab~~pull-tab games not involving a device are also conducted, and the combined percent-of-accuracy of all ~~pull tab~~pull-tab games at the site for the previous quarter was ninety-eight and one-half percent or greater, no weekly interim audit is required. Percent-of-accuracy is computed as cash profit divided by adjusted gross proceeds; and
 - j. An organization may transfer a device from a site to another site or rotate a device among sites. If an organization discontinues gaming at a site, it may close a game or transfer the game to a device at another site. If a game is in the process of being conducted through a device, an organization may not transfer the game to a jar bar.
15. Two or more organizations may use devices at the same site on different days of the week provided the organizations use different names of games in the devices and the bar uses separate cash banks.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12-04. Requirements of a bar and an organization.

- 1. A bar employee or an employee shall deface a winning number or symbol of a pull tab when it is redeemed. Tickets redeemed for credit through a dispensing device must be defaced by an employee of the organization at the time of the interim period site visit. All winning pull tab

tickets with a bar code also must have the bar code defaced. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced.

2. A bar employee or an employee may not:
 - a. Assist a player in opening a pull tab except to assist a disabled player;
 - b. Knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, or has a game serial number different from the serial numbers of the deals in the game;
 - c. Knowingly pay a prize to a player who is redeeming a pull tab when the player with the pull tab has left the gaming area of a site;
 - d. Publicly display a redeemed pull tab;
 - e. Knowingly pay a prize for a pull tab after fifteen minutes has elapsed since it was bought. If a player attempts to redeem a pull tab after the allowed time limit, a bar employee or an employee shall, if possible, retain and void the pull tab;
 - f. Pay, from gaming funds or any other source, a prize to a player unless the player redeems an actual winning pull tab that has a game serial number from a game conducted at the site; or
 - g. Reimburse, from any source of funds, an amount to a player for play of a game that has a manufacturing defect or has an incorrect posting of information described by subsection 7, unless the attorney general approves.
3. A prize must be cash. There may be no last sale prize.
4. If a device malfunctions, is inoperable, and a player has a credit, a bar employee or an employee shall pay the player for the player's unplayed credits and record the refund on a credit redemption register. A bar shall provide this form to an organization to claim a reimbursement. If a player's currency jams in a currency validator and a device does not show a credit, a bar employee may not reimburse a player, and shall record the jam on a credit redemption register and notify an organization. If an organization determines that a device is cash long, the organization shall reimburse a player by cash or check.
5. A bar employee and an employee shall document and attest to the number and value of redeemed winning pull tabs, by value and in total, that are exchanged for cash or check. These pull tabs must be grouped, banded, dated, and retained separate from other pull tabs that an organization employee may have redeemed, and separate from those redeemed through a credit redemption device, by interim period.
6. An organization shall provide a bar employee and a bar shall maintain a current copy of subsection 8 of section 99-01.3-02-03 and sections 99-01.3-02-05, 99-01.3-02-09, ~~99-01.3-03-08~~, 99-01.3-12-03, and 99-01.3-12-04 regarding the bar employee's and bar's duties and restrictions.
7. A bar employee or an employee may post the information referenced by subdivision a or b, or both, provided that an organization does not have a partial deal that is to be added to a device. An organization shall post a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain unredeemed. Posted information may be the information described in subdivision a or b, or both:

- a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.
- b. The number or unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern. The information must be continually updated.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12-05. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. All redeemed and unsold pull tabs for a game and be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return.
2. The deal's game information sheet, flare with the state gaming stamp affixed, and one master flare.
3. A record of game serial numbers for each game.
4. ~~Record of win according to section 99-01.3-03-08.~~

~~5.~~ Credit redemption register, including the date, amount, if credits were still on the device, player's name and signature, signature or initials of person who paid the player, bar reimbursement information if applicable, and date paid.

~~6.~~[5.](#) If an employee redeems winning pull tabs at a site, a daily employee report documenting the starting and ending cash on hand, IOU records according to section 99-01.3-03-06, and prizes redeemed by prize value, total prizes, credits paid, and cash long or short, and number of redeemed top tier pull tabs by game serial number.

~~7.~~[6.](#) Cash profit as defined in subdivision d of subsection ~~8~~[9](#) of section 99-01.3-02-01.

~~8.~~[7.](#) Interim period site summary, including meter readings, test vends (if it affects the meter readings), gaming stamp number and game serial number of a deal added to a device, currency withdrawn, redeemed prizes by denomination obtained from a bar, total prizes including bar and employee redeemed if applicable, total prizes credited through the device if applicable, total credits paid, employee cash long or short if applicable, cash profit or loss, bank deposit, and information on top tier winners redeemed by game serial number.

~~9.~~[8.](#) A summary that includes the following:

- a. Number of redeemed top tier pull tabs by gaming stamp and game serial number, cumulative cash profit (loss), bank deposits, and prizes;

- b. Reconciliation of nonresettable meters for currency and the number of pull tabs dispensed to the currency in the device and to the value of the pull tabs dispensed; and
- c. Ideal gross proceeds, value of unsold pull tabs, gross proceeds, prizes, adjusted gross proceeds, cash profit, and cash long (short). The summaries of all games for a quarter must reconcile to the tax return.

- | ~~40.9.~~ Access log, including the date, time, nonresettable currency meter reading, reason for entry, and initials of the employee.
- | ~~41.10.~~ Inventory records according to subsection 1 of section 99-01.3-03-09.
- | ~~42.11.~~ Interim audit records according to subdivision i of subsection 14 of section 99-01.3-12-02.
- | ~~43.12.~~ Ideal cash bank master records according to subsection ~~54~~ of section 99-01.3-03-09.
- | ~~44.13.~~ Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
- | ~~45.14.~~ The count and reconciliation of deals and cash banks according to subsections 1, ~~54~~, and ~~76~~ of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-12.1

99-01.3-12.1-02. Use and requirements of an organization.

1. An organization may operate a prize board dispensing device when the organization's employee is on duty and may have an authorized bar employee redeem a winning pull tab and pay a cash or merchandise prize when the organization's employee is or is not on duty.
2. If a distributor's or manufacturer's security seal is broken on a deal's container before the deal is used, an organization shall return the deal to the distributor.
3. The following rules must be posted or made available to players in the area where prize board dispensing device activity is conducted. If made available to players, the rules must be in the form of a handout that is easily visible to the players and may not be a copy of the gaming law and rules:
 - a. Restricting access to or delaying using credits on a device is prohibited;
 - b. A winning pull tab must be redeemed within fifteen minutes;
 - c. A pull tab cannot be redeemed if it has been taken from the gaming area;
 - d. If a person knowingly solicits, provides, or receives any inside information, by any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
 - e. To the best of the organization's knowledge, a prize remaining on a board relates to a winning pull tab that has not been redeemed; and
 - f. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.
4. An organization shall maintain custody of all keys to a device.
5. An organization shall withdraw currency from a device within a seven-calendar-day interim period.
6. An organization shall use the current recordkeeping system unless approval is obtained from the attorney general for use of another system.
7. An organization shall have a rental agreement conforming to section 99-01.3-02-06.
8. An organization shall maintain an access log prescribed by the attorney general. A person who accesses a device for any reason shall record the access and initial the log. When a person does a test vend which affects the accounting meters or a test validation of currency, the person shall record the value of pull tabs and currency validated. An organization shall retain the log in a device during the quarter of activity.
9. An organization may provide a bar with a temporary loan to enable a bar employee to redeem winning pull tabs and pay prize board cash prizes. The loan and any increase must be made by check payable to the bar and be interest free. An organization may not access, count, or take custody of the loaned money. The duration of the loan must be until an organization discontinues conducting prize boards at a site through a device. As an option an organization may supply the bar with a cash loan amount equal to the total amount of cash prizes on a prize board. If this option is used, all remaining cash from unredeemed winning pull tabs and the redeemed winning pull tabs must be returned to the organization following final distribution of the seal prize. When the bar repays the loan, the organization shall deposit the funds in its gaming account and the deposit slip must reference the site, source of funds, and amount.

The amount reimbursed to a bar must equal the value of redeemed winning pull tabs which the bar provides an organization. An organization employee may not use a bar's cash on hand for redeeming a winning pull tab.

10. An organization may not provide an independent service technician a key to access a device regardless if the device is leased.
11. If a theft of currency occurs, an organization shall record the currency and ~~pull-tab~~pull-tab accounting meters or print a cash withdrawal report and audit the game. The organization shall provide a copy of all of this information to a local law enforcement agency and the attorney general.
12. When a prize board is closed:
 - a. The prize board must be reported on a tax return for the site at which it was closed;
 - b. An employee shall buy back all remaining redeemed winning pull tabs from a bar;
 - c. If the game has unsold pull tabs, these cannot be put back into play; or
 - d. If a coin is not awarded, an organization shall determine the prizes to report on a tax return by prorating the total cost of the coins, according to their face value, of the coins that were awarded to the total face value of all the coins. An organization may use an unawarded prize in another game, sell the prize, or deposit the coin in the gaming account.
13. An organization or employee may not:
 - a. Modify the assembly or operational functions of a device;
 - b. Use or continue to conduct a deal of pull tabs after being notified by a distributor of a ban or recall of the deal;
 - c. Designate a pull tab to entitle a player who buys it with a prize provided by a bar or distributor; or
 - d. Intentionally test vend currency or pull tabs to synchronize nonresettable accounting meters.
14. A prize board dispensing device must be conducted and played as follows:
 - a. An employee shall place all pull tabs from a deal evenly among the columns used.
 - b. If used, column sold out indicators must be designated on the last pull tab of each column when the deal is placed into the device. Each column sold out indicator for a deal must be of equal value.
 - c. An organization may transfer a device from a site to another site or rotate a device among sites. If an organization discontinues gaming at a site, it may close a prize board or transfer the prize board to a device at another site. If a prize board is in the process of being conducted through a device, an organization may not transfer the prize board to a jar bar.

History: Effective July 1, 2010; amended effective April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12.1-05. Recordkeeping.

Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. All redeemed and unsold pull tabs for a game, including column sold out indicators, must be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return.
2. The deal's game information sheet, flare with the state gaming stamp affixed, and supplemental signup sheet if applicable.
3. Purchase invoice or receipt documenting the cost and description of merchandise prizes.
4. Record of win according to section 99-01.3-03-08.
5. Credit redemption register, including the date, amount, if credits were still on the device, player's name and signature, signature or initials of person who paid the player, bar reimbursement information if applicable, and date paid.
6. If an employee redeems winning pull tabs at a site, a daily employee report documenting the starting and ending cash on hand, IOU records according to section 99-01.3-03-06, change in cash bank, total cash prizes, credits paid, and cash long or short.
7. Cash profit as defined in subdivision h of subsection [89](#) of section 99-01.3-02-01.
8. Interim period site summary, including gaming stamp number and game serial number, date placed and date removed, meter readings, test vends, currency withdrawn, total cash prizes redeemed by bar and organization employees, credit redemption register refunds, cash receipts, and bank deposit.
9. A summary that includes the following:
 - a. Cumulative cash receipts, bank deposits, and prizes;
 - b. Reconciliation of nonresettable meters for currency and the number of pull tabs dispensed to the currency in the device and to the value of the pull tabs dispensed; and
 - c. Ideal gross proceeds, value of unsold pull tabs, gross proceeds, total cash prizes, total prizes paid by check, cost of coins, total prizes, adjusted gross proceeds, cash profit, and cash long or short. The summaries of all prize boards for a quarter must reconcile to the tax return.
10. Access log, including the date, time, nonresettable currency meter reading, reason for entry, and initials of the employee.
11. Inventory records according to subsection 1 of section 99-01.3-03-09.
12. Ideal cash bank master records according to subsection [54](#) of section 99-01.3-03-09.
13. Verification of the amount deposited according to a bank statement, and an audit of the game's activity according to subsections 6 and 7 of section 99-01.3-03-10.
14. The count and reconciliation of deals and cash banks according to subsections 1, [54](#), and [76](#) of section 99-01.3-03-09.

History: Effective July 1, 2010; amended effective April 1, 2016; July 1, 2018; [January 1, 2023](#).

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

CHAPTER 99-01.3-15

99-01.3-15-02. Restrictions and requirements.

1. A licensed organization, organization that has a permit, or licensed manufacturer may not be a distributor. A person who is an officer, manager, gaming manager, or member of a governing board of a licensed organization or organization that has a permit may not be an officer, director, shareholder, proprietor, independent contractor, consultant, or employee of a distributor, nor have a financial interest in that distributor. A person having a financial interest in a distributor may not be a lessor of a site to an organization that is an active customer of that distributor. A change in ownership of a distributor must be immediately reported to the attorney general.
2. A distributor shall have an office in North Dakota where records must be kept.
3. A distributor may not offer or provide anything of value to any licensed organization or gaming location site, lessor, agent, or representative as an incentive or inducement to locate, keep, or maintain any gaming equipment, which includes electronic gaming systems or devices, at the gaming site.
4. A distributor may not include any discount or incentive to any licensed organization or gaming location site, lessor, agent, or representative for any nongaming item, such as amusement devices, electronics, advertisements or recognitions, or have any influence in the lessors' charitable gaming organization.
5. An officer, director, shareholder, agent, or employee of a distributor may not:
 - a. Play a game of pull tabs, including electronic pull tabs, club special, tip board, prize board, seal board, sports-pool board, punchboard, or electronic quick shot bingo at any site;
 - b. Conduct games of pull tabs, prize boards, pull tab and prize board dispensing devices, electronic pull tabs, club specials, seal boards, raffle boards, tip boards, sports-pool boards, or punchboards at an organization's site;
 - c. Interfere with or attempt to influence a lessor's relationship with an organization involving a lease agreement, interfere with or attempt to influence an organization's management, employment practices, policy, gaming operation, disbursement of net proceeds, or procure a site for an organization. A distributor may notify an organization of an available site; or
 - d. Provide bookkeeping services, including summarizing or auditing games ~~to~~for an organization.
- ~~4-6.~~ A distributor may not have an expressed or implied agreement with another distributor to restrict the sales of either of them to a specific geographic area or organization.
- ~~5-7.~~ A distributor may not sell or provide a drop box unless it is a double-locking removable metal container and has:
 - a. One lock that secures a drop box to the underside of a table, and one or two separate locks that secure the contents placed into the drop box. The key to each of the locks must be different; and
 - b. A slot opening through which currency and forms can be inserted into a drop box. The slot of a drop box may not exceed three and one-half inches in length and one-half inch

in width. Inside a drop box there must be a spring-loaded mechanism that automatically closes and locks the slot opening when the drop box is removed from a table.

~~6:8.~~ For a twenty-one table, a distributor may only sell or provide a playing surface that ~~meets the requirements of subsection 1 of section 99-01.3-08-02 and subsection 3 of section 99-01.3-08-04.~~ is green and does not contain imprinted graphics, excluding the tip betting spaces, unless authorized by the attorney general. A table playing surface must display no more than seven separate betting spaces and the following or equivalent statements:

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

or
If a site allows the dealer to take a hit card when the dealer has a soft seventeen:

BLACKJACK PAYS 3 TO 2
and
DEALER MUST HIT SOFT 17

~~7:9.~~ A distributor may not sell or provide twenty-one and paddlewheel (betting and casino) chips to an organization if those chips are identical in physical characteristic to chips previously sold or provided by that distributor to a different organization.

~~8:10.~~ A distributor may not give a gift, trip, prize, or other gratuity valued singly or in the aggregate in excess of one hundred dollars per employee per calendar year related to a licensed organization or organization that has a permit. A distributor may not loan money (excluding credit) to a licensed organization or organization that has a permit, or to an employee of such an organization.

~~9:11.~~ An employee shall read and acknowledge in writing, within thirty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions of the gaming law and rules which relate to the person's job duties. The distributor shall designate the provisions to be read. The acknowledgment must be dated, reference the provisions, and be part of the person's personnel file.

~~10:12.~~ If information on a license application becomes inaccurate or outdated in any material way, including changes to the employee listing, the distributor shall provide the attorney general, in writing, items of change within fourteen days following the change.

~~11:13.~~ A distributor may not share an office or warehouse facility with an organization.

~~12:14.~~ A distributor shall file a copy of each sales invoice and record of voided gaming stamps with the attorney general by the fifth business day following the month of the transaction.

~~13:15.~~ A distributor may not buy or be provided gaming equipment from an affiliated company unless the company is a wholly owned subsidiary of the distributor. An affiliated company shall have originally bought the equipment directly from a licensed manufacturer.

~~14:16.~~ A distributor may not buy or be provided gaming equipment from an out-of-state distributor unless the out-of-state distributor has the manufacturer ship the equipment directly to the licensed distributor and the manufacturer is licensed.

~~15:17.~~ A distributor may not knowingly possess, display, sell, or provide an organization a deal of pull tabs, club special, tip board, prize board, or punchboard that:

- a. Does not conform to the quality standards of sections 99-01.3-16-04 and 99-01.3-16-05;

- b. Has a manufacturer's or distributor's seal broken on the manufacturer's container or has been prohibited by the attorney general from sale or play within North Dakota; or
- c. Contains pull tabs or punches that have winner protection features although they are not winning pull tabs or punches.

| 46.18. A distributor may not temporarily store any game that has a state gaming stamp affixed to its flare which has been sold. A sale occurs when a distributor issues a sales invoice. If a distributor sells or provides gaming equipment to another distributor, the distributor shall ship the equipment directly to the other distributor's address.

| 47.19. A distributor shall direct a manufacturer to ship gaming equipment directly to the distributor and the distributor shall have it unloaded at its warehouse. However, if a distributor buys equipment from a manufacturer for sale to another distributor or buys a flashboard, blower, jar bar, paddlewheel, or twenty-one, poker, or paddlewheel table for sale to an organization, the distributor may direct the manufacturer to ship the equipment directly to the other distributor or organization, including the organization's site.

| 48.20. A distributor may not separate a paper bingo card when there are two or more faces on a sheet.

| 49.21. A distributor may not:

- a. Sell or provide a dispensing device, fifty-fifty raffle system, site system with bingo card-marking devices, electronic quick shot bingo site operating system with card-marking devices, electronic pull tab device with operating system, and related equipment to an organization unless a model of the device or system has first been approved by the attorney general;
- b. Modify an approved dispensing device model, electronic currency validator, fifty-fifty raffle system, site system with bingo card-marking devices, electronic quick shot bingo site operating system with card-marking devices, or an electronic pull tab device with operating system unless authorized by the attorney general; or
- c. Rent a dispensing device to an organization unless the rent is for a fixed dollar rate per month or other duration. For a site system with bingo card-marking devices, a distributor may rent a site system with devices to an organization for a fixed dollar rate per month or other duration, or for a percentage or fixed dollar amount of rental income derived from players who use the devices. For an electronic quick shot bingo site operating system with card-marking devices, a distributor may rent a site operating system with devices to an organization for a fixed dollar rate per month or other duration, or a fixed rate per bingo card sold. For a fifty-fifty raffle system, a distributor may rent a system to an organization for a fixed dollar rate per month or other duration, or a fixed rate per ticket sold. For electronic pull tab devices with operating system, a distributor may rent devices with operating system to an organization for a fixed dollar rate per month or other duration, or a fixed rate per electronic pull tab ticket sold. Rent may not be based on gross proceeds, adjusted gross proceeds, or net income earned from bingo, raffles, or pull tabs. If a distributor rents a site system with bingo card-marking devices, electronic quick shot bingo site operating system with card-marking devices, fifty-fifty raffle system, or electronic pull tab devices with operating system to an organization, the distributor may have a manufacturer, on behalf of the distributor, issue an invoice to an organization; however, the organization shall remit all rent payments directly to the distributor.

| 20.22. A distributor may arrange for an organization to acquire a dispensing device through a financing lease purchase agreement with a finance or lease company. Although an

organization is deemed to own a device, a finance or lease company may have a security interest or ownership right in the device until the organization satisfies the lease.

~~21.23.~~ If a distributor is an agent for another distributor in marketing a dispensing device, the agent is not required to complete a sales invoice. A distributor is an agent if it receives a commission and does not finance or take temporary possession or title to the device.

~~22.24.~~ A distributor that sells or provides a new or used dispensing device to an organization or distributor, other than as an agent, or merely transacts a transfer of a device, for or without a fee, between two organizations, shall do the following unless that distributor contracts with another distributor to comply with this rule on its behalf:

- a. Maintain an adequate inventory of electronic and mechanical parts in North Dakota, provide maintenance service, and provide technical assistance and training in the service and repair of a device;
- b. Make available, upon request, electrical and mechanical parts to all other licensed distributors at the usual price for such parts; and
- c. Notify the attorney general of any recurring electronic or mechanical malfunction of a device model.

~~23.25.~~ A distributor that resells, transacts a transfer, rents, or provides a used dispensing device to an organization shall change or arrange to have changed all the keyed locks on the device.

~~24.26.~~ A distributor shall initially set up a dispensing device, fifty-fifty raffle system, site system with bingo card-marking devices, electronic quick shot bingo site operating system with card-marking devices, electronic ~~pull-tab~~~~pull-tab~~ devices with operating system, and related equipment at a site and before activation of the device or system, conduct and document one training session on the operation and service of each for ~~an employee~~employees of an organization that acquires a device or system for the first time. The training must be documented, which includes detailing what was covered in the training and a listing of the individuals of the organization who participated in the training. The documentation must be dated and attested to by each organization employee, the distributor representative, and for electronic pull-tab devices with operating system, by the manufacturer representative according to subsection 5 of section 99-01.3-16-09.6. A copy of this documentation must be retained by the organization and distributor. A distributor shall provide an operations manual to an organization operating a dispensing device, electronic ~~pull-tab~~~~pull-tab~~ devices with operating system, fifty-fifty raffle system, site system with bingo card-marking devices, electronic quick shot bingo site operating system with card-marking devices, and related equipment.

~~25.27.~~ If a modification or software upgrade is required for gaming equipment, a distributor must modify, upgrade, or replace the software or gaming equipment within the time frame established by the attorney general. Gaming equipment provided by a distributor that remains in operation without the required modification, upgrade, or replacement is considered unapproved by the attorney general.

~~28.~~ A service technician may not access a dispensing device or electronic ~~pull-tab~~~~pull-tab~~ device unless accompanied by an organization employee.

~~26.29.~~ A distributor may not possess, in inventory, a processing chip encoded with proprietary software that was duplicated by the distributor for a dispensing device or electronic pull tab device usable in North Dakota.

~~27-30.~~ A distributor may not sell or provide new video surveillance equipment or install video surveillance equipment for an organization unless the distributor is an approved vendor of the equipment or is approved by the attorney general.

~~28-31.~~ If a distributor receives an administrative or criminal complaint or a citation from another state, it shall notify the attorney general in writing within thirty days of the date of the complaint or citation.

~~29-32.~~ An electronic quick shot bingo site operating system with card-marking devices, fifty-fifty raffle system, site system with bingo card-marking devices, electronic ~~pull tab~~~~pull-tab~~ devices with operating system, and related equipment may only be sold or provided to an organization with a state gaming license.

~~30-33.~~ A distributor shall report a malfunction of a fifty-fifty raffle system, site system with bingo card-marking devices, electronic quick shot bingo site operating system with card-marking devices, or electronic ~~pull tab~~~~pull-tab~~ devices with operating system, which affects the security or integrity of the system or the outcome of a game to the attorney general within the next business day of the date of occurrence.

~~31.~~ ~~At least seven calendar days before installing, upgrading, or converting an electronic pull tab device and operating system at a gaming site, the distributor shall report the following information to the attorney general in writing:~~

~~a. Manufacturer;~~

~~b. Serial numbers of the gaming equipment;~~

~~c. Source from whom the gaming equipment was acquired, how the gaming equipment was transported into the state, and name and address of the common carrier or person that transported the gaming equipment;~~

~~d. Gaming site where the gaming equipment will be placed;~~

~~e. Identification number of software components;~~

~~f. Certification; and~~

~~g. Date of install.~~

~~32.~~ ~~At least seven calendar days before removal of an electronic pull tab device and operating system from a gaming site, the distributor shall report the following information to the attorney general in writing:~~

~~a. Manufacturer;~~

~~b. Serial numbers of the gaming equipment;~~

~~c. Date on which it was removed;~~

~~d. Destination of the gaming equipment; and~~

~~e. Name of the person to whom the gaming equipment is to be transferred to, including the person's street address, business and home telephone numbers, how the gaming equipment is to be transported, and name and address of the common carrier or person transporting the gaming equipment.~~

34. Within five business days after installation, upgrading, converting, transfer, or removal of an electronic pull-tab device and operating system, a distributor shall submit an electronic pull-tab certification notice on a prescribed form to the attorney general.

35. All electronic pull-tab devices must be keyed in the following manner:

- a. The logic compartment must be keyed with a lock that is different from all other locks. The logic compartment key is to be in the possession of the distributor. The organization may not have possession of this key. This key may not open any other area of any device. The logic compartment key can be universal for a manufacturer.
- b. Each stacker drop box must have a separate key per site and be keyed differently than any other area of the device. This key is to only be in the possession of the organization. The distributor may not have access to this key.
- c. The belly key or keys must be keyed separately from the logic compartment area and stacker drop box. This key may be universal to the organization. Only the organization may possess this key. A distributor may not have access to this key.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-14

99-01.3-15-10. Recordkeeping.

A distributor shall maintain complete, accurate, and legible accounting records in North Dakota. The records must be retained for three years and include, by month:

1. Purchase invoices for gaming equipment.
2. Sales of gaming and nongaming equipment, supplies, and services sold or provided on a distributor's invoice. A sales invoice must be prepared on a form approved by the attorney general and include:
 - a. License number of the distributor;
 - b. Business name and address of the buyer and business name and address where the gaming equipment or supplies were shipped to or where the service was performed;
 - c. License or permit number of the buyer, if applicable;
 - d. Invoice number and date;
 - e. Date shipped or date of service;
 - f. Indication for a credit memo;
 - g. Quantity, price, and description of each item of gaming equipment, supplies, and services. This includes the name of game and indication of the item as a deal of pull tabs, electronic deal of pull tabs, club special, prize board, tip board, seal board, raffle board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards. For a deal of pull tabs (excluding jar tickets), it must include a manufacturer's form number. For a series of paddlewheel ticket cards, it must include the number of paddlewheel ticket cards and number of tickets on each card. For a prize board, it must include separate costs, including sales tax, for a merchandise prize (if any), coins, and board and pull tabs. For paper bingo cards, it must include the primary color of single cards or primary color of the top card of collated booklets, type (number of faces on a

sheet) of collated booklets or single cards, number of cards in a collated booklet, and serial number and size of series. For dispensing devices, it must include name of the device and its model and serial number. For a site system with bingo card-marking devices and electronic quick shot bingo site operating system with card-marking devices, it must include the quantity of devices and name, model and serial number, and version of the system and devices. For a fifty-fifty raffle system, it must include name of the system and its model and serial number. For electronic ~~pull-tab~~pull-tab devices with operating system, it must include the quantity, name, model, and serial numbers of the devices and version of the operating system. For service work performed, it must include the nature of the work and identify the system or device the work was performed on;

- h. Gaming stamp number;
- i. Ideal gross proceeds, ideal adjusted gross proceeds, price of a merchandise prize, and value of a last sale prize; ~~and~~
- j. An indication that a deal was resealed and the reason, if applicable; and
- k. For electronic pull-tab devices with operating systems for which a fixed rate per electronic pull-tab ticket sold is charged, the sales invoice must include a separate line item amount for each site and specific set of games that the fixed rates are being billed for. Charges for each specific set of games for a site must be easily identifiable on the sales invoice and must include the site name, manufacturer, and the date range for which the charges apply.

3. A sales invoice must be:

- a. Prenumbered consecutively with a preprinted number of at least four characters;
- b. Prepared in three parts and issued as follows:
 - (1) One part to the customer;
 - (2) One part retained in an invoice file by customer name; and
 - (3) One part to the attorney general. Every invoice, including voids, must be numerically accounted for; and
- c. A credit memo for a returned item must be prepared and issued like a sales invoice. A credit memo must represent only a returned item.

4. A sales journal must include the invoice date, number, total amount, and name of customer.

5. A cash receipts journal must include cash sales, cash received from all sources, name of customer, date a payment is received, and amount.

6. A cash payments journal must include checks issued, cash payments, date of check or payment, check number, name of payee, and type of expense.

7. Record of voided gaming stamps on a form prescribed by the attorney general.

8. Inventory records and reconciliation of inventories.

9. A repair report for each service call on a dispensing device.

10. Documentation of a training session conducted according to subsection 24 of section 99-01.3-15-02.

11. A manufacturer's invoice that references a rental fee charged an organization for a site system with bingo card-marking devices, an electronic quick shot bingo site operating system with card-marking devices, fifty-fifty raffle system, and electronic ~~pull-tab~~pull-tab devices with operating system.
12. A monthly report detailing, for each different variation of electronic ~~pull-tab~~pull-tab game, the total number of times a deal for the game was downloaded to an organization site server for play. The report must include for each deal, manufacturer, game name, state gaming stamp number, game serial number, number of pull tabs, cost per play, ideal gross proceeds, ideal prizes, and pay out percentage.
13. Perpetual inventory records of bingo card-marking devices used with site systems and of card-marking devices used with electronic quick shot bingo site operating systems, which must include the organization name, site, model of device, serial number of device, and dates issued to and returned from a site.
14. Perpetual inventory records of fifty-fifty raffle systems which must include the organization name, site, control programs installed, and number of sales units.
15. Perpetual inventory records of electronic ~~pull-tab~~pull-tab devices with operating systems, which must include the organization name, site, control programs installed, and number of electronic ~~pull-tab~~pull-tab devices at the site. For each electronic ~~pull-tab~~pull-tab device, the inventory records must include manufacturer, unique serial number, model number, and date of manufacture. This information must be retained for three years.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-16 MANUFACTURERS

Section

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99-01.3-16-03. Restrictions and requirements.

1. A manufacturer that sells, or provides, paper bingo cards to a distributor shall print its name or distinctive logo and the assigned serial number and series number (card number) on each card. A manufacturer shall have available for sale or provide to a distributor a master checkbook covering all card serial numbers. A manufacturer may not ship paper bingo cards directly to a licensed organization or organization that has a permit.
2. A manufacturer may only sell or provide gaming equipment to a licensed distributor. A manufacturer shall maintain accounting records of all sales of gaming equipment and retain them for three years. The records may be in electronic form.
3. A manufacturer shall not offer or provide anything of value to any licensed organization or gaming location site, lessor, agent, or representative as an incentive or inducement to locate, keep or maintain any gaming equipment, which includes electronic gaming systems or devices, at the gaming site.
4. An officer, director, shareholder, agent, or employee of a manufacturer may not:
 - a. Play a game of pull tabs, including electronic pull tabs, club special, tip board, prize board, seal board, sports-pool board, punchboard, or electronic quick shot bingo, of that manufacturer, at any site;
 - b. Conduct games of pull tabs, prize boards, pull-tab and prize board dispensing devices, electronic pull tabs, club specials, seal boards, raffle boards, tip boards, sports-pool boards, or punchboards at an organization's site;
 - c. Interfere with or attempt to influence a lessor's relationship with an organization involving a lease agreement, interfere with or attempt to influence an organization's management, employment practices, policy, gaming operation, disbursement of net proceeds, or procure a site for an organization; or

d. Provide bookkeeping services, including summarizing or auditing games for an organization.

5. A manufacturer may not share an office or warehouse facility with an organization.

6. A manufacturer may not give a gift, trip, prize, or other gratuity valued singly or in the aggregate in excess of one hundred dollars per employee per calendar year related to a licensed distributor or organization.

~~4.7.~~ A manufacturer may not modify the assembly or operational functions of an approved ~~pull-tab~~pull-tab dispensing device model unless requested by the attorney general or a written request is approved by the attorney general. The attorney general may apply section 99-01.3-16-10 for approving a modification to a device model.

~~5.8.~~ A manufacturer may not modify pay table, bonus features, games, or current methods of operation of an approved site system with bingo card-marking devices, and electronic quick shot bingo site operating system with card-marking devices and related equipment unless requested or authorized by the attorney general. The attorney general may apply section 99-01.3-16-10 for approving a modification to a device.

~~6.9.~~ A manufacturer may not modify the software, pay table, extended play features, games, or current methods of operation of an approved electronic ~~pull-tab~~pull-tab device with operating system and related equipment unless requested or authorized by the attorney general. The attorney general may apply section 99-01.3-16-10 for approving a modification to a device or operating system.

~~7.10.~~ A manufacturer may not modify operating software or methods of operation of an approved fifty-fifty raffle system and related equipment unless requested or authorized by the attorney general. The attorney general may apply section 99-01.3-16-10 for approving a modification to a system.

~~8.11.~~ A manufacturer may service a fifty-fifty raffle system, site system with bingo card-marking devices or electronic quick shot bingo site operating system with ~~card-marking~~card-marking devices and related equipment used by an organization.

~~9.12.~~ A manufacturer of a dispensing device, fifty-fifty raffle system, site system with bingo card-marking devices, or electronic quick shot bingo site operating system with card-marking devices and related equipment shall provide an operations manual to a distributor.

~~10.13.~~ A manufacturer shall report a malfunction of a fifty-fifty raffle system, site system with bingo card-marking devices, electronic quick shot bingo site operating system with card-marking devices, or electronic ~~pull-tab~~pull-tab device with operating system which affects the security or integrity of the system or the outcome of a game to the attorney general by the next business day of the date of occurrence.

~~11.14.~~ A manufacturer shall provide on the front of a master flare for a deal of jar tickets or pull tabs and on the flare display of an electronic ~~pull-tab~~pull-tab device, that contain:

- a. Name of game;
- b. Manufacturer's form number;
- c. Cost per play;
- d. Value and number of winning prizes;
- e. Number of pull tabs or jar tickets; and

- f. The phrase, "prizes above are combinations of single prizes below" or a similar phrase when combinations of winning pull tabs are displayed on the flare.

The number of prizes may be designated by a number or by a quantity of symbols that represent the number of winning prizes and the winning number or symbol. A symbol must be pictured on a flare, not described. A master flare for a game involving deals of jar tickets that contain winning tickets of the same prize value printed in differently colored numbers or symbols must have the flare's number and symbols printed in matching colors.

If an extended play feature is used for electronic pull tabs, a notification must be provided to the player explaining that an extended play feature is used on the game and that "Extended play features prolong the play of an electronic ~~pull tab~~ pull-tab ticket but do not award a prize in addition to the predetermined prize for that ticket."

- ~~12.15.~~ A manufacturer, its agents and employees, members of a manufacturer's immediate family, or persons residing in a manufacturer's household may not make any loan directly or indirectly to any organization or officer, director, game manager, or entity involved in the management, operation, or conduct of charitable gaming in the state of North Dakota.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-09.5. Manufacturing specifications - ~~Fifty-fifty~~ Electronic raffle ~~systems~~ systems.

~~A fifty-fifty~~ An electronic raffle system and related equipment used in the conduct of raffles according to chapter 99-01.3-05.1 for electronic fifty-fifty raffles and chapter 99-01.3-05-01.1 for online raffle ticket sales, must meet the specifications of the most current version of gaming laboratories international, LLC's standard for electronic raffle systems, GLI-31. Online raffle ticket sale systems may not use a random number generator to determine the winner of the raffle event. All online raffle ticket sale systems must print a barrel ticket for manual draw of a winner. In addition, the following specifications must be met:

1. In the use of handheld raffle sales units outside of a wireless network area, the units must have the ability to transfer the sold draw numbers and corresponding validation numbers to the fifty-fifty raffle system should a raffle sales unit become inoperable.
2. For each single event electronic fifty-fifty raffle and online raffle ticket sales event, ~~a fifty-fifty~~ an electronic raffle system must account for and provide accounting information on all activity for three years from the end of the quarter in which the activity occurred. It must:
 - a. Record all raffle sales transactions electronically as they occur;
 - b. Account for each single event electronic fifty-fifty raffle and online raffle ticket sales event with a nonresettable electronic consecutive event number;
 - c. Record and account for each draw number downloaded from the server in continuous consecutive order;
 - d. Generate a summary report for each single event raffle which includes:
 - (1) Name of organization and license number;
 - (2) Name of site;
 - (3) Date;

- (4) Event number;
 - (5) Range of draw numbers and total number of draw numbers available for sale;
 - (6) Selling prices of each differently priced bearer ticket, including the number of draw numbers on each differently priced ticket;
 - (7) Number of tickets sold for each differently priced bearer ticket and total receipts for each;
 - (8) Total number of sold draw numbers;
 - (9) Total number of voided bearer tickets and draw numbers;
 - (10) Total number of unsold draw numbers; and
 - (11) Total gross proceeds;
- e. Generate a raffle sales unit report for each single event raffle which includes:
- (1) Name of organization and license number;
 - (2) Name of site;
 - (3) Date;
 - (4) Event number;
 - (5) For each raffle sales unit, unit ID, the number of sold bearer tickets for each differently priced ticket and total receipts for each;
 - (6) Total receipts for each sales unit;
 - (7) For each raffle sales unit, total number of sold draw numbers, total number of voided bearer tickets and draw numbers, and total number of unsold draw numbers; and
 - (8) Total gross proceeds;
- f. Have the ability to generate general accounting and operating reports, containing the date and time reports are printed, for each raffle drawing to include:
- (1) System exception report, including changes to system parameters, corrections, overrides, and voids;
 - (2) Bearer ticket report that includes a list of all bearer tickets sold, including all associated draw numbers, selling price, and raffle sales unit ID;
 - (3) Voided draw number report that includes a list of all voided draw numbers;
 - (4) Unsold draw number report that includes a list of all unsold draw numbers; and
 - (5) Raffle sales unit corruption report that lists all raffle sales units that were unable to be reconciled to the system, including the raffle sales unit ID, seller, and money collected.; and
- g. The ~~fifty-fifty~~ electronic raffle system must be capable of producing and exporting through electronic means (e.g. comma delimited, excel, etc.) all required reports.

3. The ~~fifty-fifty~~electronic raffle system must be remote-accessible by the manufacturer of the system and attorney general for monitoring the system operation and accounting information in real time.
4. The wireless deployment of communications between the raffle sales units and the system must employ a secure gateway to isolate the wireless environment from any other environment. The secure gateway must be configured in a manner that prevents any wireless network component from gaining access to the internal network without first being scrutinized.
5. A surge protector that feeds all power to the equipment must be installed to ensure the equipment must not be adversely affected by surges or dips of plus or minus twenty percent of the supply voltage.
6. ~~A fifty-fifty~~An electronic raffle system must be capable of maintaining the accuracy of all information required by this section for ninety days after power is discontinued from the system.
7. The ~~fifty-fifty~~electronic raffle system must be impervious to influences from the outside of the system, including electromagnetic interference, electrostatic interference, and radio frequency interference.
8. The ~~fifty-fifty~~electronic raffle system must not have any switches, jumpers, wire posts, or other means of manipulation that could affect the operation or outcome of a game.
9. A manufacturer of ~~a fifty-fifty~~an electronic raffle system and related equipment shall employ sufficient security safeguards in designing and manufacturing the system such that it may be verified that all proprietary software components are authentic copies of the approved software components and all functioning components of the system are operating with identical copies of approved software programs. The system must also have sufficient security safeguards so that any approved proprietary software is protected from alteration by unauthorized personnel. Security measures to comply with these provisions may consist of the use of dongles, digital signature comparison hardware and software, secure boot loaders, encryption, and password systems.
10. The backup and archive utility that allows the operator to save critical data if a system failure occurs should automatically run after the end of each raffle or may be a manual process to be run at the operator's command after the end of each raffle.
11. An online raffle ticket sales system must utilize a geofence system to reasonably detect the physical location of a patron attempting to access the raffle ticket sales system to purchase a raffle ticket, and to monitor and block unauthorized attempts to purchase a raffle ticket when a patron is not within the state of North Dakota. All online raffle ticket sales must be made by a patron located in the authorized geographic boundaries within North Dakota. The authorized geographic boundaries must exclude Indian lands located in North Dakota.
12. An online raffle ticket sales system must use age verification methods to ensure that a patron is eighteen years of age or older.

History: Effective April 1, 2016; amended effective July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-09.6. Manufacturing specifications - Electronic ~~pull-tab~~pull-tab device with operating system.

An electronic ~~pull-tab~~pull-tab device is part of an electronic ~~pull-tab~~pull-tab device operating system approved by the attorney general. An electronic ~~pull-tab~~pull-tab device operating system must be

dedicated primarily to electronic accounting, reporting, and the presentation, randomization, and transmission of electronic pull tabs to the electronic ~~pull-tab~~pull-tab device. It also must be capable of generating the data necessary to provide the reports required within this section or otherwise specified by the attorney general. A manufacturer of an electronic ~~pull-tab~~pull-tab device with operating system must have the device and system tested by an approved independent testing laboratory as required in section 99-01.3-16-10. All game themes, sounds, and music also must be approved by the attorney general prior to being available for play on an electronic ~~pull-tab~~pull-tab device in North Dakota. An electronic ~~pull-tab~~pull-tab device and operating system and related equipment used in the conduct of electronic pull tabs according to chapter 99-01.3-06.1 must meet these specifications:

1. All equipment used to facilitate the distribution, play, or redemption of electronic pull tabs must be physically located within the boundaries of the state of North Dakota. Electronic ~~pull-tab~~pull-tab device operating systems and all secondary components must be located on the licensed premises.

2. At least seven calendar days before an electronic pull-tab device and operating system enter the state of North Dakota, a manufacturer shall report the following information to the attorney general in writing:

a. Serial number of the electronic pull-tab device;

b. How the electronic pull-tab device will be transported into the state and name and address of the common carrier or person that will be transporting the electronic pull-tab device;

c. Gaming distributor and site where the pull-tab device will be placed;

d. Identification number of software components;

e. Certification; and

f. Date of delivery.

3. At least seven calendar days before removal of an electronic pull-tab device and operating system from the state of North Dakota, the manufacturer shall report the following information to the attorney general in writing:

a. Serial number of the electronic pull-tab device;

b. Date on which it was removed;

c. Destination of the electronic pull-tab device; and

d. Name of the person to whom the electronic pull-tab device is to be transferred to, including the person's street address, business and home telephone numbers, how the electronic pull-tab device is to be transported, and name and address of the common carrier or person transporting the electronic pull-tab device.

4. A manufacturer's central computer system must include a central server located in North Dakota which is accessible to the attorney general. The attorney general shall have the ability to remotely verify the operation, compliance, and internal accounting systems of the electronic ~~pull-tab~~pull-tab operating system at any time. The attorney general shall have real time and complete ~~read-only~~ access to all data and reports for all systems and devices.

~~3.5.~~ Manufacturers shall provide technical assistance and training in the service and repair of its electronic ~~pull-tab~~pull-tab devices and operating systems and associated equipment to distributors and organizations to ensure the continued, approved operation, and play of its

~~machines purchased for placement~~ devices and systems placed in the state; ~~however, manufacturers shall not be involved in the direct ongoing service on behalf of a distributor or organization.~~ Manufacturers shall assist distributors according to subsection 26 of section 99-01.3-15-02 and a manufacturer representative shall sign and attest to the training provided on the required training document.

~~4.6.~~ An electronic pull-tab device site operating system must have a dedicated system site server. All electronic pull-tab games and game information must be stored on the site server. The site server must back up all game and accounting information automatically to the manufacturer's central server, at a minimum, immediately after the close of electronic pull-tab activity at a site each business day. All electronic pull-tab deals are considered in play when starting an electronic pull-tab game or when an electronic pull-tab deal is added to a game and all deals are considered in play until the game is closed.

~~7.~~ An electronic pull-tab device is only used as a means to communicate with a system site server and play electronic pull tabs. A device may not communicate game information directly to a manufacturer's central server. No electronic pull-tab game information may be stored on a device. All games and game information must be stored on the dedicated system site server. An electronic ~~pull-tab~~pull-tab device must allow a player to purchase an opportunity to play an electronic pull tab by insertion of United States paper currency ~~only~~or by insertion of the manufacturer's credit ticket voucher. A player wins if the player's electronic pull tab contains a combination of numbers, letters, or symbols that were designated in advance of the game as a winning combination. Each winning line or pattern on a winning pull tab constitutes an individual win. There may be multiple winning ~~combinations~~lines or patterns on each pull tab. Electronic ~~pull-tab~~pull-tab devices must only allow players to purchase and play electronic pull tabs. No other game may be played or represented that is a currently authorized North Dakota gaming activity. Authorized games for electronic ~~pull-tab~~pull-tab devices must conform to the following standards:

- a. The available games, master flare for each game, and rules of play must be displayed on the electronic ~~pull-tab~~pull-tab device's video screen. Rules of play must include all winning combinations. The display clearly must indicate prizes in United States currency amounts.
- b. All prize structure information for a deal must be accessible by a player, prior to purchase of an electronic ~~pull-tab~~pull-tab ticket.
- c. The electronic ~~pull-tab~~pull-tab device must have one or more buttons, electromechanical or touchscreen, to facilitate the following functions:
 - (1) Viewing of the game "help" screens;
 - (2) Viewing of the game rules, including the flare and prize structure information for a deal of a game, which includes the number of winners for each prize denomination;
 - (3) Initiating game play;
 - (4) Cash out; and
 - (5) One or more buttons designated to reveal the pull tab windows.
- d. Each electronic pull tab initially must be displayed so that the numbers, letters, or symbols on the pull tab are concealed. Each electronic ~~pull-tab~~pull-tab game must require the player to press a "play", "purchase", "open", or equivalent button to initiate the play of an electronic pull tab. A player may have the option of opening each individual line, row, or column of each electronic pull tab or may choose to "open all".

- e. An electronic ~~pull tab~~pull-tab game may not have any bonus features or have or be part of a progressive system. No level of player skill may be involved. An extended play feature may be used in which a player may play without additional consideration. The extended play feature must not interfere with or in any way affect the outcome of any finite game being played.
- f. No more than ~~six~~twelve electronic ~~pull tab games~~pull-tab game titles may be selectable for play on any given electronic ~~pull tab~~pull-tab device operating system. Only one of the ~~games~~game titles can be played on an electronic ~~pull tab~~pull-tab device at any given time.
- g. Game themes may not contain offensive or obscene graphics, animations, or references. The attorney general shall determine what constitutes obscene or offensive graphics, animations, or references.
- h. An electronic ~~pull tab~~pull-tab device may not be capable of displaying any enticing animation while in an idle state. A device not in play may not display flashing lights or illuminations, bells, whistles, or other sounds, solely intended to entice players to play. Only game information or licensed gaming organization promotion, or both, may be displayed while not in play. An electronic ~~pull tab~~pull-tab device may use simple display elements or screen savers that promote the licensed charitable organization to prevent monitor damage.
- i. Following play on an electronic ~~pull tab~~pull-tab device, the result must be clearly shown on the video display along with any prizes that may have been awarded. Prizes must be dispensed in the form of a credit ticket voucher or added to the credit balance meter.
- j. The results of the electronic pull tab must be shown to the player using a video display. No rolling, flashing, or spinning animations are permitted. No rotating reels marked into horizontal segments by varying symbols are permitted.
- k. ~~The game serial number of the played pull tab must be displayed clearly on the video display.~~
- ~~l.~~ The default electronic ~~pull tab~~pull-tab device display, upon entering game play mode, may not be the top prize.

~~5.8.~~ An available balance may be collected from the electronic ~~pull tab~~pull-tab device by the player by pressing the "cash out" button and receiving a credit ticket voucher at any time other than during:

- a. A game being played;
- b. While in an audit mode;
- c. Any door open;
- d. Test mode;
- e. A credit meter or win meter incrementation, unless the entire amount is placed on the meters when the "cash out" button is pressed; or
- f. An error condition.

~~6.9.~~ An electronic ~~pull tab~~pull-tab device may not have hardware or software that determines the outcome of any electronic pull tab, produces its own outcome, or affects the order of electronic pull tabs as dispensed from the electronic ~~pull tab~~pull-tab operating system. The game

outcome must be determined by the electronic ~~pull-tab~~pull-tab operating system as outlined within these rules.

~~7.10.~~ An electronic ~~pull-tab~~pull-tab device may not be capable of displaying the number of electronic pull tabs that remain in the game or the number of winners or losers that have been awarded or still remain in the game while the game is still being played.

~~8.11.~~ Each electronic ~~pull-tab~~pull-tab deal must meet the following minimum requirements:

- a. Each deal must be made up of a fixed number of electronic pull tabs not to exceed a maximum of fifteen thousand and no less than two thousand electronic pull tabs;
- b. All electronic pull tabs in a particular deal must be of the same purchase price and may not exceed the maximum two dollar sales price per pull tab set forth by North Dakota Century Code section 53-06.1-08;
- c. The maximum prize amount awarded for a winning combination of numbers, letters, or symbols on each electronic pull tab may not exceed five hundred dollars as set forth for pull tabs by North Dakota Century Code section 53-06.1-08;
- d. A deal must have at least two top tier winning pull tabs;
- e. Each deal may not payout more than ninety percent of gross proceeds;
- f. Each deal must be assigned a unique serial number; and
- g. Each deal must be assigned a unique state gaming stamp number by the distributor prior to delivery to the organization site server.

~~9.12.~~ The following electronic ~~pull-tab~~pull-tab deal information must be available prior to the opening of a deal for distribution and must be maintained and be viewable both electronically and, if requested, by printed report:

- a. Game identification;
- b. Deal version;
- c. Manufacturer;
- d. Game name;
- e. Prize structure identification;
- f. The state gaming stamp number assigned by the distributor for each deal;
- g. A unique serial number identifying each deal;
- h. The total number of electronic pull tabs in the deal;
- i. The purchase price per electronic pull tab assigned to the deal;
- j. Prize structure, including each prize value included in the deal and the number of each; ~~and an associated index number~~; and
- k. The payout percentage of the deal.

~~10.13.~~ At the beginning of a quarter, at least two, and no more than two electronic ~~pull-tab~~pull-tab deals must be downloaded and commingled on the site server for each game. The games deal must be identical, which includes game identification, deal version, manufacturer, game

name, total number of electronic pull tabs, purchase price per electronic ~~pull-tab~~pull-tab ticket, and prize structure.

~~41.14.~~ For each game, when the unsold tickets of the original starting identical two deals reach two thousand ~~pull-tab~~pull-tab tickets remaining, at least one full deal, but no more than one additional identical deal of the same game, must be automatically downloaded onto the site server and commingled with the remaining two thousand tickets of that game. Each time the two thousand ticket threshold is reached, an additional deal must automatically be downloaded and commingled with the remaining electronic ~~pull-tab~~pull-tab tickets in the game continuously throughout the entire quarter.

~~42.15.~~ All games must be played by drawing from commingled finite deals. The site server must dispense, upon request from an electronic ~~pull-tab~~pull-tab device, an electronic pull tab. All finite games must be played without replacement. Once dispensed, a pull tab cannot be reused.

~~43.16.~~ No game may be closed during a quarter unless approved by the attorney general and all games must be closed at the same time within fourteen calendar days from the end of a quarter. Once closed, a game and its deals for a manufacturer cannot be reopened. Quarter beginning and end dates are:

- a. January first through March thirty-first;
- b. April first through June thirtieth;
- c. July first through September thirtieth; and
- d. October first through December thirty-first.

~~44.17.~~ Electronic ~~pull-tab~~pull-tab games or deals must be closed and archived at the end of each quarter. No closed electronic ~~pull-tab~~pull-tab game or ticket can be sold after the electronic ~~pull-tab~~pull-tab game is closed.

~~45.18.~~ One or more electronic accounting systems must be required to perform reporting and other functions in support of the electronic ~~pull-tab~~pull-tab operating system activities described in this section. These systems may communicate with the other computers described elsewhere in this document, utilizing the protocol standards agreed upon by the participating suppliers. The electronic accounting system must not interfere with the outcome of any gaming functions.

~~46.19.~~ An organization must have the capability to access an electronic pull-tab device operating system to generate and print all required system reports, close a set of electronic pull-tab games, and download a set of electronic pull-tab games without assistance from a manufacturer or distributor.

20. An organization must have the capability to access an electronic pull-tab device operating system to select the individual games and cost per play they want to download and play each quarter without assistance from a manufacturer or distributor. A manufacturer or distributor may not require that a certain game and cost per play, or group of games and cost per play, or particular set of games and cost per play be required to be downloaded and played.

21. If an electronic pull-tab device operating system is taken down and made nonoperational during an active session, the system must send a notification to all pull-tab devices and display the notification on the display screen. In addition, if credits remain on any device when a system is taken down and made nonoperational, the system must immediately have the devices issue credit ticket vouchers to the players that have credits remaining on a device's credit meter.

22. An electronic ~~pull-tab~~pull-tab device operating system site server along with the manufacturer's central computer system's central server must account for and provide accounting information on all electronic ~~pull-tab~~pull-tab activity for three years from the end of the quarter in which the activity occurred. An electronic ~~pull-tab~~pull-tab device operating system site server along with the manufacturer's central computer system's central server must have the capabilities that allow an organization to generate and print the following records and reports:

~~a. Interim period electronic pull tab device activity report, generated and printed each interim period for each separate device. An interim period is the accounting period since the last time electronic pull tab activity was accounted for. This report accounts for activity conducted by a device since the last interim period electronic pull tab device report was generated. The report must include the following information:~~

~~(1) Organization and site name;~~

~~(2) Date and time the report was generated;~~

~~(3) Device identification or serial number;~~

~~(4) Total cash in since last interim period;~~

~~(5) For each electronic pull tab game and in total for all games, total dollar value of plays since last interim period;~~

~~(6) For each electronic pull tab game and in total for all games, total dollar value of prizes awarded since last interim period; and~~

~~(7) Total dollar value of credit ticket vouchers issued since last interim period.~~

~~b. Deals in play report that accounts for all electronic deals of pull tabs currently in play for each game at a site. The report must include the following information:~~

~~(1) Organization and site name;~~

~~(2) Date and time the report was generated;~~

~~(3) Game name and manufacturer;~~

~~(4) State gaming stamp number of each deal;~~

~~(5) Serial number of each deal;~~

~~(6) Cost per pull tab;~~

~~(7) Number of pull tabs per deal;~~

~~(8) Ideal gross proceeds per deal;~~

~~(9) Ideal prizes per deal;~~

~~(10) The payout percentage per deal;~~

~~(11) Date and time each deal was put into play; and~~

~~(12) Total number of deals put into play for the game.~~

~~This report may not include any information as it relates to the number of pull tabs sold, number of unsold pull tabs, or prizes awarded for each deal or game.~~

~~c. Monthly interim audit report for each electronic pull tab game at a site. The report must include the following information:~~

- ~~(1) Organization and site name;~~
- ~~(2) Date and time the report was generated;~~
- ~~(3) Game name and manufacturer;~~
- ~~(4) Total dollar value of plays (gross proceeds); and~~
- ~~(5) Total prizes awarded.~~

~~This report may not include any information as it relates to the number of unsold pull tabs remaining in the game or a breakdown of prizes awarded, including prize values and quantity of each.~~

~~d. Electronic pull tab closed game summary report for each game at a site, which can only be generated and printed after the game is closed. The report must include the following information:~~

- ~~(1) Organization and site name;~~
- ~~(2) Date and time the report was generated;~~
- ~~(3) Game name and manufacturer;~~
- ~~(4) State gaming stamp number and serial number of each deal played in the game;~~
- ~~(5) Date and time each deal was placed into play;~~
- ~~(6) Total number of deals played in the game;~~
- ~~(7) Number of pull tabs per deal;~~
- ~~(8) Cost per pull tab;~~
- ~~(9) Ideal gross proceeds per deal;~~
- ~~(10) Ideal prizes per deal;~~
- ~~(11) Total number of unsold pull tabs;~~
- ~~(12) Total gross proceeds for the game;~~
- ~~(13) Total prizes for the game, including a breakdown of prizes by prize value and quantity of each awarded;~~
- ~~(14) Final payout percentage for the game;~~
- ~~(15) Total adjusted gross proceeds for the game; and~~
- ~~(16) Date and time game was closed.~~

~~Only upon the close of a game at the end of the quarter can the finite details of a game be made available. Generating this report prior to the game being closed must cause immediate and automatic termination of the entire game.~~

~~17. All accounting information from an electronic pull tab device operating system site server must be automatically downloaded to the manufacturer's central computer system's central server immediately after the close of electronic pull tab activity each business day.~~

~~a. An organization shall have the capabilities of printing all required records and reports from the site server and the manufacturer's central computer system's central server.~~

~~b. An organization's electronic pull tab device operating system may be programmed for hours of operation based on when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city.~~

a. Interim period electronic pull-tab device activity report - accounts for electronic pull-tab activity for an interim period by device and total. An interim period is the accounting period for electronic pull-tab activity since the last time activity was accounted for.

(1) The following information is required on the report:

(a) Organization name;

(b) Site name;

(c) Name of manufacturer;

(d) Beginning and ending date and time of the interim period;

(e) Date and time the report is generated by the organization. This must be the same as the ending date and time of the interim period. If included on the report, the print date and time may be different;

(f) For each device, a separate section on the report that includes:

[1] Device identification or serial number;

[2] Total cash in;

[3] Total dollar value of credit ticket vouchers in;

[4] Total dollar value of cash in plus total dollar value of credit ticket vouchers in;

[5] Total dollar value of credit ticket vouchers issued out; and

[6] For each game and cost per play;

[a] Total dollar value of gross proceeds (plays);

[b] Total dollar value of prizes awarded; and

[c] Total dollar value of adjusted gross proceeds (gross proceeds less prizes awarded); and

(g) A summary section, which includes:

[1] Total cash in for all devices for the interim period;

[2] Total dollar value of credit ticket vouchers in for all devices for the interim period;

[3] Total dollar value of cash in plus total dollar value of credit ticket vouchers in for all devices for the interim period;

[4] Total dollar value of credit ticket vouchers issued out by all devices for the interim period;

[5] For each game and cost per play:

[a] Total dollar value of gross proceeds (plays) for all devices;

[b] Total dollar value of prizes awarded for all devices; and

[c] Total dollar value of adjusted gross proceeds (gross proceeds less prizes awarded) for all devices; and

[6] Totals for all games and cost per play:

[a] Total dollar value of gross proceeds (plays) for all games and cost per play;

[b] Total dollar value of prizes awarded for all games and cost per play; and

[c] Total dollar value of adjusted gross proceeds (gross proceeds less prizes awarded) for all games and cost per play.

(2) All devices must be accounted for on the interim period electronic pull-tab device activity report even if there was no activity or play on a device.

(3) A manufacturer's electronic pull-tab device site operating system must be capable of identifying the beginning date and time of an interim period, which must be the ending date and time of the previous interim period electronic pull-tab device activity report that was generated for the site electronic pull-tab activity.

(4) The site operating system may not allow for the overlap of reporting between two or more interim periods nor may the site operating system allow for unaccounted activity between interim periods. An interim period electronic pull-tab device activity report may not include electronic pull-tab activity from electronic pull-tab games that have been closed.

(5) The site operating system must ensure that the game information, total gross proceeds (total dollar value of plays), total dollar value of prizes awarded, and total adjusted gross proceeds, for each game and cost per play, from all interim period electronic pull-tab device activity reports generated for a quarter of electronic pull-tab activity at a site, equals the game information for each game and cost per play accounted for on the electronic pull-tab closed game summary report, generated when all electronic pull-tab games are closed at a site at the end of each quarter.

b. Deals in play report - accounts for all electronic deals of pull tabs currently in play for each game and cost per play at a site.

(1) The following information is required on the report:

(a) Organization name;

(b) Site name;

(c) Name of manufacturer;

(d) Date and time the report is generated by the organization; and

(e) For each game and cost per play, a separate section on the report that includes:

[1] Game name;

[2] Cost per pull tab;

[3] Number of pull tabs per deal;

[4] Ideal gross proceeds per deal;

[5] Payout percentage per deal;

[6] Total number of deals put into play for the game; and

[7] For each deal put into play for the game:

[a] State gaming stamp number of each deal;

[b] Serial number of each deal; and

[c] Date and time each deal was put into play.

(2) A manufacturer's electronic pull-tab device site operating system must allow an organization to generate and print this report whenever the organization deems necessary during a quarter.

(3) This report when generated must account for all electronic deals of pull tabs for a game and cost per play at a site from the time the game was first put into play through the date and time the report is generated by the organization. This includes deals that may have had all of its tickets sold before the report generation date and time. All electronic deals that have been downloaded onto the system for play for each game and cost per play must be accounted for on this report.

(4) This report may not include any information as it relates to the number of pull tabs sold, number of unsold pull tabs, or prizes awarded for each deal or game.

c. Monthly interim audit report - accounts for electronic pull-tab game information for each game and cost per play conducted at a site from the date and time the electronic pull-tab games were first put into play through the date and time that the report is generated.

(1) The following information is required on the report:

(a) Organization name;

(b) Site name;

(c) Name of manufacturer;

(d) Beginning and ending date and time of the interim audit period;

(e) Date and time the report is generated by the organization;

(f) Game name and cost per play;

(g) For each game and cost per play:

[1] Total dollar value of gross proceeds (plays);

[2] Total dollar value of prizes awarded; and

[3] Total dollar value of adjusted gross proceeds (gross proceeds less prizes awarded); and

(h) Totals for all games and cost per play for gross proceeds, prizes, and adjusted gross proceeds.

(2) A manufacturer must ensure that each time a monthly interim audit report is generated that its electronic pull-tab device site operating system is accounting for gross proceeds (the total dollar value of plays), prizes awarded, and adjusted gross proceeds for each electronic pull-tab game and cost per play on a site system from the time the games were first put into play at a site through the date and time the organization generates the report.

(3) An organization is required to generate and print this report at the end of the first and second months of a quarter and retain the reports with all other accounting records and reports for the electronic pull-tab activity conducted at a site each quarter. An independent audit person of the organization is required to reconcile the totals for all games and cost per play information from the monthly interim audit report to the game summary report for all games conducted at the site at the end of the first and second months of a quarter. However, a manufacturer's electronic pull-tab device site operating system must allow an organization to generate and print this report whenever the organization deems necessary during a quarter.

(4) The manufacturer's electronic pull-tab device site operating system must ensure that a monthly interim audit report only may be generated after an organization has completed an interim period visit to a site and has generated the interim period electronic pull-tab device activity report.

(5) This report may not include any information as it relates to the number of unsold pull tabs remaining in the game or a breakdown of prizes awarded, including prize values and quantity of each.

d. Electronic pull tab closed game summary report - accounts for the activity of each electronic pull-tab game and cost per play conducted on an electronic pull-tab device site operating system at the end of each quarter.

(1) The following information is required on the report:

(a) Organization name;

(b) Site name;

(c) Name of manufacturer;

(d) Date and time the report is generated by the organization;

(e) For each game and cost per play, a separate section on the report that includes:

[1] Game name;

[2] Cost per pull tab;

[3] Number of pull tabs per deal;

[4] Ideal gross proceeds per deal;

[5] Ideal prizes per deal;

[6] Ideal payout percentage per deal;

[7] Total number of deals played in the game;

[8] For each deal played in the game:

[a] State gaming stamp number of each deal;

[b] Serial number of each deal; and

[c] Date and time each deal was put into play;

[9] Ideal gross proceeds for game;

[10] Total number of unsold pull tabs;

[11] Dollar value of unsold pull tabs;

[12] Total dollar value of gross proceeds (plays) for the game;

[13] Total dollar value of prizes awarded for the game, including a breakdown of prizes by individual prize value and quantity of each awarded. For electronic pull tabs with multiple winners, each winning line or pattern must be accounted for separately by individual prize denomination;

[14] Total dollar value of adjusted gross proceeds (gross proceeds less prizes awarded) for the game;

[15] Final payout percentage for the game; and

[16] Date and time the game was closed; and

(f) Summary section, totals for all games and cost per play, that includes:

[1] Total dollar value of gross proceeds (plays) for all games and cost per play;

[2] Total dollar value of prizes awarded for all games and cost per play;

[3] Total dollar value of adjusted gross proceeds (gross proceeds less prizes awarded) for all games and cost per play; and

[4] Total number of deals played including a list of all gaming stamp numbers.

(2) A manufacturer's electronic pull-tab device site operating system must ensure that the final interim period electronic pull-tab device activity report is generated for the site immediately before the site operating system allows the organization to close all electronic pull-tab games at the site and generate the electronic pull-tab closed game summary report.

(3) The site operating system must ensure that the game information, total gross proceeds (total dollar value of plays), total dollar value of prizes awarded, and total adjusted gross proceeds, for each game and cost per play, from all interim period

electronic pull-tab device activity reports generated for a quarter of electronic pull-tab activity at a site, equals the game information for each game and cost per play accounted for on the electronic pull-tab closed game summary report, generated when all electronic pull-tab games are closed at a site at the end of each quarter.

(4) The electronic pull-tab device site operating system may not allow this report to be generated before all electronic pull-tab games have been closed at a site. Only upon the close of the games at the end of the quarter can the finite details of the games be made available. Generating this report before the games being closed must cause immediate and automatic termination of all games.

23. All four electronic pull-tab system reports required by subdivisions a through d of subsection 22 of section 99-01.3-16-09.6 must be formatted as prescribed by the attorney general and approved by the office.

24. A manufacturer must ensure that exact copies of all electronic pull-tab system reports required by North Dakota Administrative Code, which are generated by the organization, are readily and easily accessible for viewing and printing by the attorney general. The game information terminology (e.g. gross proceeds, prizes, adjusted gross proceeds) used on the required system generated reports for electronic pull-tab games must be identical to the terminology used by North Dakota Administrative Code for the game type. The reports must be retained by report type and include the date and time the report was generated and listed by the organization's name and then by site name. The reports must be retained for three years from the end of the quarter in which the electronic pull-tab activity occurred. In addition, the attorney general shall have the ability to generate and print, at any time, the deals in play report and monthly interim audit report for electronic pull-tab activity conducted at any site in the state of North Dakota.

25. The only reports that an organization shall have access to and generate as it relates to the actual accounting and specific details of electronic pull-tab activity conducted at a site using an electronic pull-tab device operating system are the four reports prescribed by subdivision a through d of subsection 22 of section 99-01.3-16-09.6. No other additional reports that a manufacturer may have developed, which detail the actual accounting information and specific details relating to electronic pull-tab activity conducted at a site using an electronic pull-tab device operating system may be accessible to an organization while the electronic pull-tab games are actively in play.

26. An organization is responsible for generating all required electronic pull-tab system reports and the closing of all electronic pull-tab games at a site. The manufacturer may not complete these functions for the organization.

27. A manufacturer, at the request of an organization, distributor, or for any reason, may not change data on an electronic pull-tab device site operating system that affects the reporting and accounting of electronic pull-tab activity. A manufacturer must immediately notify the attorney general if the manufacturer identifies a problem with an electronic pull-tab device site operating system that relates to the collection, storing, or reporting of electronic pull-tab activity at a site.

28. A manufacturer must ensure that the attorney general has access to an electronic pull-tab activity report that includes game and accounting information for all sites that conduct electronic pull-tab activity in the state of North Dakota. The attorney general must have the capabilities to generate and print the report for any date range, for any organization and site, and for all sites in total. The following information is required to be included on the report:

a. Total cash in;

b. Total gross proceeds (plays);

c. Total prizes awarded;

d. Total adjusted gross proceeds;

e. Payout percentage; and

f. Total dollar value of credit ticket vouchers issued.

29. An organization's electronic pull-tab device operating system must be programmed for hours of operation based on when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city.

~~18.30.~~ Electronic ~~pull-tab~~pull-tab devices must be a stand-alone cabinet style device. No device may be a hand-held portable device or affixed to a bar, counter, or table top. Electronic ~~pull-tab~~pull-tab devices must conform to the following minimum standards:

a. An electronic ~~pull-tab~~pull-tab device must be labeled clearly so as to inform the public that no one under twenty-one years of age is allowed to play;

b. No more than ten devices may be installed at a site;

c. An electronic ~~pull-tab~~pull-tab device must only be used to play electronic pull tabs. No other game type may be played or be simulated on the device and no level of skill must be involved;

d. An electronic ~~pull-tab~~pull-tab device may not be part of a progressive system or employ any other features, such as bonus plays, promotions, or other gaming management or marketing functions. An extended play feature may be used in which a player may play without additional consideration. An extended play feature must not interfere with or in any way affect the outcome of any finite game being played. If an extended play feature is used, a notification must be provided to the player explaining that an extended play feature is used on the game and that "Extended play features prolong the play of an electronic ~~pull-tab~~pull-tab ticket but do not award a prize in addition to the predetermined prize for that ticket";

e. In addition to a video or touchscreen, each electronic ~~pull-tab~~pull-tab device must include a currency acceptor and validator, printer, and buttons for activating the game and providing player input, including a means for the player making selections and choices in games;

f. Each electronic ~~pull-tab~~pull-tab device must have a nonvolatile backup memory or its equivalent, which must be maintained in a secure compartment on each electronic ~~pull-tab~~pull-tab device for the purpose of storing and preserving a redundant set of critical data which has been error-checked in accordance with the critical memory requirements of this regulation and which data must include, at a minimum, the following information:

(1) Electronic meters as required by subsection ~~33 of section 99-01.3-16-09.645~~;

(2) Recall of all ticket purchases and electronic ticket numbers and serial numbers associated with the last ten plays; and

(3) Error conditions that may have occurred on the electronic ~~pull-tab~~pull-tab device which include:

(a) Nonvolatile memory error control program error;

- (b) Low nonvolatile memory battery, for batteries external to the nonvolatile memory itself, or low power source;
 - (c) Program error or authentication mismatch; and
 - (d) Power reset;
- g. An on/off switch that controls the electrical current that supplies power to the electronic ~~pull-tab~~pull-tab device, which must be located in a secure place;
 - h. An electronic ~~pull-tab~~pull-tab operating system must support a mechanism to manually disable play on electronic ~~pull-tab~~pull-tab devices. Additionally, a mechanism to disable or enable each electronic ~~pull-tab~~pull-tab device must be made available to appropriate individuals to disable play during nonbusiness hours or as otherwise required;
 - i. An electronic ~~pull-tab~~pull-tab device may not have any spinning or mechanical reels, pull handle, sounds or music solely intended to enticing a player to play, flashing lights, tower light, ~~top box~~, coin tray, ~~ticket acceptance~~, hopper, coin acceptor, enhanced animation, cabinet or pay glass artwork, or any other attribute identified by the attorney general; and
 - j. All hardware switches and jumpers must be fully documented for evaluation by the test laboratory. Hardware switches, jumpers, and system configurations that may alter the jurisdictional-specific configuration settings, prize structure, game denomination, or payout percentages must meet configuration settings specified in subdivision e of subsection ~~8 of section 99-01.3-16-09.612~~ and must be housed within a logic compartment of the electronic ~~pull-tab~~pull-tab device. This includes top prize changes, selectable settings, or any other option that would affect payout percentage.
- ~~19.31.~~ An electronic ~~pull-tab~~pull-tab device must be robust enough to withstand forced entry that would leave behind physical evidence of the attempted entry, or such entry causes an error code that is displayed and transmitted to the central computer system, and which inhibits game play until cleared, and which does not affect the subsequent play or any other play, prize, or aspect of the game.
- ~~20.32.~~ An electronic ~~pull-tab~~pull-tab device must be designed so that power and data cables into and out of the electronic ~~pull-tab~~pull-tab device can be routed so that they are not accessible to the general public. Security related wires and cables that are routed into a logic compartment must be securely fastened within the interior of the device.
- ~~21.33.~~ Proof of UL or equivalent certification must be required for all submitted electronic ~~pull-tab~~pull-tab devices.
- ~~22.34.~~ An electronic ~~pull-tab~~pull-tab device must have an identification tag affixed to the exterior of the device by the manufacturer, which is not removable without leaving evidence of tampering, and this tag must include the following information:
- a. The manufacturer;
 - b. A unique serial number;
 - c. The electronic ~~pull-tab~~pull-tab device model number; and
 - d. The date manufactured.
- ~~23.35.~~ An electronic ~~pull-tab~~pull-tab device may not be adversely affected, other than resets, by surges or dips of greater than twenty percent of the supply voltage.

24.36. An electronic ~~pull-tab~~pull-tab device must have a locked external front door in which the interior of the terminal must not be readily accessible when such door is in the closed, locked position. The following rules apply:

- a. Doors must be manufactured of materials that are suitable for allowing only legitimate access to the inside of the cabinet and must leave evidence of tampering if such an entry is made;
- b. All external doors must be locked and monitored by door access sensors, which must detect and report all external door openings to the electronic ~~pull-tab~~pull-tab device and trigger an audible alarm and on-screen display;
- c. The electronic ~~pull-tab~~pull-tab device must cease play when any external door is opened;
- d. It must not be possible to insert a device into the electronic ~~pull-tab~~pull-tab device which will disable a door open sensor when the electronic ~~pull-tab~~pull-tab device's door is closed, without leaving evidence of tampering;
- e. The sensor system must register a door as being open when the door is moved from its fully closed and locked position, provided power is supplied to the terminal; and
- f. Door open conditions must be recorded in an electronic log that includes a date and time stamp.

25.37. Electronic ~~pull-tab~~pull-tab devices that contain control programs located within an accessible area must have a separate internal locked logic compartment which must be keyed differently than the front door access lock. The logic compartment must be a locked cabinet area with its own locked door, which houses critical electronic components that have the potential to significantly influence the operation of the electronic ~~pull-tab~~pull-tab device. There may be more than one such logic area in an electronic ~~pull-tab~~pull-tab device. The logic door must be monitored. Electronic components that are required to be housed in one or more logic areas are:

- a. Central processing units and any program storage device that contains software that may affect the integrity of gaming, including the game accounting, system communication, and peripheral firmware devices involved in, or which significantly influence, the operation and calculation of game play, game display, game result determination, or game accounting, revenue, or security;
- b. ~~Communication controller electronics and components housing the communication program storage media or the communication board for the online system may reside outside the electronic pull tab device;~~
- ~~c.~~ The nonvolatile memory backup device, if applicable, must be kept within a locked logic area; and
- ~~d.c.~~ Logic compartment door open conditions must be recorded in a log that includes a date and time stamp.

26.38. All electronic ~~pull-tab~~pull-tab devices must accept United States paper currency or a credit ticket voucher only through a currency validator. All currency validators must be able to detect the entry of valid currency or credit ticket vouchers and provide a method to enable the electronic ~~pull-tab~~pull-tab device software to interpret and act appropriately upon a valid or invalid input. The currency validator must be electronically based and be configured to ensure that they only accept valid currencies of legal tender or valid credit ticket vouchers and must reject all other items. Rejected currencies or rejected credit ticket vouchers should be returned to the player. The currency validator must be constructed in a manner that protects against

vandalism, abuse, or fraudulent activity. In addition a currency validator must meet the following rules:

- a. Each valid currency or valid credit ticket voucher must register the actual monetary value received for the denomination or credit ticket voucher being used on the player's credit meter;
- b. Credits must only be registered when:
 - (1) The currency or valid credit ticket voucher has passed the point where it is accepted and stacked; and
 - (2) The validator has sent the "irrevocably stacked" message to the electronic ~~pull-tab~~ pull-tab device-;
- c. Each currency validator must be designed to prevent the use of cheating methods, such as stringing, the insertion of foreign objects, and any other manipulation that may be deemed as a cheating technique. A method for detection of counterfeit currencies must be implemented;
- d. Acceptance of any currencies or valid credit ticket voucher for crediting to the credit meter must only be possible when the electronic ~~pull-tab~~ pull-tab device is enabled for play. Other states, such as error conditions, including door opens, audit mode, and game play, must cause the disabling of the currency validator system;
- e. Each electronic ~~pull-tab~~ pull-tab device and currency validator must have the capability of detecting and displaying the following error conditions, and must cause the electronic ~~pull-tab~~ pull-tab device and currency validator to lock up and require authorized intervention to clear:
 - (1) Stacker full;
 - (2) Currency or credit ticket voucher jams;
 - (3) Stacker door open;
 - (4) Stacker removed; and
 - (5) Any currency validator malfunction not specified above-;
- f. All currency validators must communicate to the electronic ~~pull-tab~~ pull-tab device using a bidirectional protocol;
- g. If a currency validator for an electronic ~~pull-tab~~ pull-tab device is designed to be factory set only, it must not be possible to access or conduct maintenance or adjustments to those currency validators in the field, other than:
 - (1) The selection of currencies;
 - (2) Changing of certified control program media or downloading of certified software;
 - (3) Adjustment of the currency validator for the tolerance level for accepting currencies of varying quality should not be allowed externally to the electronic ~~pull-tab~~ pull-tab device;
 - (4) Maintenance, adjustment, and repair per approved factory procedures; or
 - (5) Options that set the direction or orientation of currency acceptance.

- h. The electronic ~~pull-tab~~pull-tab device must maintain sufficient electronic metering to be able to display the following:
 - (1) Total monetary value of all currencies accepted;
 - (2) Total number of all currencies accepted; and
 - (3) A breakdown of the currencies accepted and the number of currencies accepted for each currency denomination;
- i. The information in subdivision h must be retained in the electronic ~~pull-tab~~pull-tab device memory and display the above required information of the last five currencies accepted by the currency validator. The currency validator recall log may be combined or maintained separately by currency type. If combined, the type of currency accepted must be recorded with the respective time and date stamp;
- j. Each currency validator must have a secure stacker and all accepted currencies must be deposited into the secure stacker. The secure stacker and its receptacle are to be attached to the electronic ~~pull-tab~~pull-tab device in such a manner so that they cannot be easily removed by physical force and must meet the following rules:
 - (1) The currency validator device must have the ability to detect a stacker full condition; and
 - (2) There must be a separate keyed lock to access the stacker area. This keyed lock must be separate from the main door; and
- k. A currency validator must be located in a locked area of the terminal but not in the logic area. Only the currency insertion area will be accessible by the player.

27.39. All electronic ~~pull-tab~~pull-tab devices must have a printer to issue the player a printed credit ticket voucher for any unused game plays and winnings or both. The printer must print on a voucher or other ticket stock meeting the criteria outlined in this section. The electronic ~~pull-tab~~pull-tab device must support the transmission of voucher out data to the electronic ~~pull-tab~~pull-tab system that records the following information regarding each credit ticket voucher printed:

- a. Value of cash out which may include remaining credits, unused game plays, or winnings, or any combination, in United States currency amounts in numerical form;
- b. Time of day the voucher was printed in twenty-four hour format showing hours and minutes;
- c. Date the voucher was printed, including the day, month, and year;
- d. The name of the organization and site name;
- e. Serial number of the electronic ~~pull-tab~~pull-tab device which printed the voucher;
- f. Validation number which can be used to uniquely identify each voucher issued;
- g. The phrase that the credit ticket voucher must be redeemed on the same business day; and
- h. If the electronic ~~pull-tab~~pull-tab device is capable of printing a duplicate voucher, the duplicate voucher must clearly state the word "DUPLICATE" or similar approved language on its face.

- ~~28.40.~~ To further meet the requirements of subdivisions a through h of subsection 27, the electronic ~~pull-tab~~pull-tab device must have the ability to retain a log of the last twenty-five voucher-out events. The voucher-out log must contain sufficient information to reconstruct the voucher-out event in order to resolve potential player disputes.
- ~~29.41.~~ A printer must be located in a locked area of the electronic ~~pull-tab~~pull-tab device but may not be housed within the logic area. The printer may be locked in the currency validator area provided the validator has a secure, separately keyed lock securing the access to its stacker.
- ~~30.42.~~ A printer must have mechanisms to allow control program software to interpret and place the electronic ~~pull-tab~~pull-tab device inoperable upon the following conditions:
- Out of paper;
 - Printer jam, failure; and
 - Printer disconnected.
- ~~31.43.~~ The printer must use printer paper containing security features, such as a watermark as approved by the attorney general.
- ~~32.44.~~ Video monitors and or touchscreens must meet the following rules:
- Touchscreens must be accurate once calibrated and must maintain that accuracy for at least the manufacturer's recommended maintenance period;
 - A touchscreen should be able to be recalibrated without access to the electronic ~~pull-tab~~pull-tab device cabinet other than opening the main door; and
 - There may not be any hidden or undocumented buttons or touch points anywhere on the touchscreen which affect game play or which impact the outcome of the game.
- ~~33.45.~~ The credit meter must be maintained in cash value and must at all times indicate all cash available for the player to purchase tickets or cash out with the exception of when the player is viewing an informational screen, such as a menu or help screen item. This should be displayed to the player unless a tilt condition or malfunction exists.
- The dollar value of every prize at the end of a play must be added to the player's credit meter, unless a winning prize amount is immediately dispensed in the form of a credit ticket voucher to the player.
 - There must be a collect meter, which shows the amount of cash collected by the player upon a cash out. This should be displayed to the player unless a tilt condition or malfunction exists. The amount of cash collected must be subtracted from the player's credit meter and added to the collect meter.
 - The software meter information must only be accessible by an authorized person and must have the ability to be displayed on demand using a secure means.
 - Electronic accounting meters must be at least ten digits in length. These meters must be maintained in credit units equal to the dollars and cents. Eight digits must be used for the dollar amount and two digits used for the cents amount. The meter must roll over to zero upon the next occurrence, and any time the meter exceeds ten digits and after 9,999,999,999 has been reached or any other value that is logical. Occurrence meters must be at least eight digits in length; however, are not required to automatically roll over. Meters must be labeled so they can be clearly understood in accordance with their function. All electronic ~~pull-tab~~pull-tab devices must be equipped with a device,

mechanism, or method for retaining the value of all meter information specified in these rules which must be preserved in the event of power loss to the device. The required electronic meters are as follows:

- (1) Total cash in;
- (2) Total credit ticket vouchers in;
- (3) Total cash played;
- ~~(3)~~(4) Total cash, prizes won;
- ~~(4)~~(5) Total cash removed from the electronic ~~pull-tab~~pull-tab device;
- ~~(5)~~(6) Total count of electronic pull tabs played; and
- ~~(6)~~(7) Total count of electronic pull tabs won.

e. In addition to the one set of master electronic accounting meters required above, each individual game available for play must have the prize structure meters "credits played" and "prizes won" in dollars and cents.

~~34.46.~~ An electronic ~~pull-tab~~pull-tab device may not have software that determines the outcome of any electronic ~~pull-tab~~pull-tab game. All application software must be owned or licensed by the manufacturer. All game outcomes are determined at the time of deal creation by the electronic ~~pull-tab~~pull-tab operating system software as outlined within this section of the administrative rules.

- a. Electronic ~~pull-tab~~pull-tab game software must be developed by the manufacturer if the manufacturer designs the electronic ~~pull-tab~~pull-tab system, database, user interface, the program architecture, and associated software.
- b. Any application software to be used by the manufacturer must be owned wholly or properly licensed from an application software provider and evidence of the license must be provided to the attorney general.
- c. The electronic ~~pull-tab~~pull-tab system manufacturer must provide documentation establishing ownership of the intellectual property rights to the entire game application software and system to the attorney general.

~~35.47.~~ The electronic ~~pull-tab~~pull-tab operating system must be dedicated primarily to functions related to the creation of electronic pull tabs and their creation, randomization, storage, and transmittal to the electronic ~~pull-tab~~pull-tab devices. It also must be capable of generating the data necessary to provide the reports required within this section. The operating system must be operationally independent from the electronic ~~pull-tab~~pull-tab device. The electronic ~~pull-tab~~pull-tab operating system, logic components, and site server must be in a locked, secure enclosure with key controls in place.

~~36.48.~~ The electronic ~~pull-tab~~pull-tab operating system must provide a secure physical and electronic means, for securing the electronic deals against alteration, tampering, or unauthorized access. The electronic ~~pull-tab~~pull-tab operating system must provide a means for terminating the electronic ~~pull-tab~~pull-tab game if unopened ~~pull-tab~~pull-tab information has been accessed or at the discretion of the attorney general.

~~37.49.~~ Progressives, cashless gaming, bonus plays, promotions, or other gaming management or marketing functions are not allowed. An extended play feature may be used if there is no additional consideration required from the player and the features do not alter the

predetermined prize to be awarded for the ~~pull-tab~~pull-tab ticket. No player skill may be required with the extended play feature.

~~38.50.~~ As used in this section, unless the context requires a different meaning:

- a. "Card position" means the first electronic pull tab dealt, second electronic pull tab dealt in sequential order.
- b. "Number position" means the first number drawn in sequential order.

~~39.51.~~ Any random number generation used in connection with the central computer system must be by use of a microprocessor and random number generation program that meets the following random selection tests:

- a. Chi-square analysis. Each card, symbol, number, or position which is wholly or partially determinative of the outcome of the game satisfies the ninety-nine percent confidence limit using the standard chi-square analysis.
- b. Runs test. Each card, symbol, number, or position does not, as a significant statistic, produce predictable patterns of game elements or occurrences. Each card symbol, number, or position will be considered random if it meets the ninety-nine percent confidence level with regard to the "runs test" or any generally accepted pattern testing statistic.
- c. Correlation analysis. Each card, symbol, number, or position is independently chosen without regard to any other card, symbol, number, or position drawn within that game play. Each card, symbol, number, or position is considered random if it meets the ninety-nine percent confidence level using standard correlation analysis.
- d. Serial correlation analysis. Each card, symbol, number, or position is independently chosen without reference to the same card, number, or position in the previous game. Each card, number, or position is considered random if it meets the ninety-nine percent confidence level using standard serial correlation analysis.

~~40.52.~~ The central computer system may not permit the alteration of any accounting or significant event log information that was properly communicated from the electronic ~~pull-tab device~~pull-tab operating system site server without supervised access controls. If financial data is changed, an automated audit log must be capable of being produced to document:

- a. Data element altered;
- b. Data element value prior to alteration;
- c. Data element value after alteration;
- d. Time and date of alteration; and
- e. Personnel that performed alteration (user login).

~~41.53.~~ The electronic ~~pull-tab~~pull-tab operating system must have a medium for securely storing electronic ~~pull-tab~~pull-tab deals on the site server which must be mirrored in real time by a backup medium. The manufacturer's central computer system server also must provide a means for storing duplicates of the electronic deals, already transmitted to the electronic ~~pull-tab devices~~pull-tab operating system site server, so as to reflect, on an ongoing basis, changes in the transmitted electronic deals as they occur.

~~42.54.~~ All storage must be through an error checking, nonvolatile physical medium, or an equivalent architectural implementation, so if the primary storage medium fails, the functions of the

central computer system and the process of auditing those functions can continue with no critical data loss.

43.55. The database must be stored on redundant media so that no single failure of any portion of the system would cause the loss or corruption of data.

44.56. In the event of a catastrophic failure when the central computer system cannot be restarted in any other way, it must be possible to reload the central computer system from the last viable backup point and fully recover the contents of that backup, recommended to consist of at least the following information:

- a. Significant events;
- b. Accounting information;
- c. Auditing information; and
- d. Specific site information, such as employee files with access levels.

45.57. Connections between all components of the central computer system only must be through the use of secure communication protocols that are designed to prevent unauthorized access or tampering, employing advanced encryption standards or equivalent encryption with changeable seeds or algorithms. More specifically, secure connections and encryption must be utilized between the interface component and the system. ~~This same level of security is not required between the electronic pull-tab device and the interface component when they are housed within the same physical cabinet or enclosure.~~

46.58. All data communication must incorporate an error detection and correction scheme to ensure the data is transmitted and received accurately.

47.59. The system must be capable of detection and displaying certain conditions. These conditions must be recorded on an error log that may be displayed or printed on demand and must archive the conditions for a minimum of ninety days. The conditions include:

- a. Power reset or failure of an electronic ~~pull-tab~~pull-tab device or any component of the online data system; and
- b. Communication loss between an electronic ~~pull-tab~~pull-tab device and any component of the online data system.

48.60. A firewall or equivalent hardware device configured to block all inbound and outbound traffic that has not been expressly permitted and is not required for continued use of the electronic ~~pull-tab~~pull-tab operating system must exist between the electronic ~~pull-tab~~pull-tab operating system and any external point of access.

49.61. The minimum width for encryption keys is one hundred twelve bits for symmetric algorithms and one thousand twenty-four bits for public keys.

- a. There must be a secure method implemented for changing the current encryption key set. It is not acceptable to only use the current key set to "encrypt" the next set.
- b. There must be a secure method in place for the storage of any encryption keys. Encryption keys must not be stored without being encrypted themselves.

50.62. The following significant events, if applicable, must be collected from the electronic ~~pull-tab~~pull-tab device and communicated to the central computer system for storage and a report of the occurrence of the significant event must be made available upon request:

- a. Power resets or power failure;
- b. Communication loss between an electronic ~~pull-tab~~pull-tab device and any component of the electronic ~~pull-tab~~pull-tab site operating system;
- c. Door openings;
- d. Currency validator errors;
 - (1) Stacker full; and
 - (2) Currency jam;
- e. Printer errors;
 - (1) Printer empty or paper low; and
 - (2) Printer disconnect or failure;
- f. Corruption of the electronic ~~pull-tab~~pull-tab device RAM or program storage device; and
- g. Any other significant events as defined by the protocol employed by the electronic ~~pull-tab~~pull-tab site operating system.

~~51.63.~~ The electronic pull-tab device operating system must not permit the alteration of any accounting or event log information that was properly communicated from the electronic ~~pull-tab~~pull-tab device to the dedicated site server unless documented, secure access controls are provided.

~~52.64.~~ The operating system of the electronic ~~pull-tab~~pull-tab system must provide comprehensive password security or other secure means of ensuring data integrity and enforcing user permissions for all system components through the following means:

- a. All programs and data files must be accessible only via the entry of a password that will be known only to authorized personnel;
- b. The electronic ~~pull-tab~~pull-tab operating system must have multiple security access levels to control and restrict different classes;
- c. The electronic ~~pull-tab~~pull-tab operating system access accounts must be unique when assigned to the authorized personnel and shared accounts amongst authorized personnel must not be allowed;
- d. The storage of passwords and personal identification numbers must be in an encrypted, nonreversible form; and
- e. A program or report must be available which lists all registered users on the electronic ~~pull-tab~~pull-tab operating system, including their privilege level. This report must include all user accounts that have access to system configurations, data, or other sensitive areas.

~~53.65.~~ All components of an electronic ~~pull-tab~~pull-tab operating system that allows access to users, other than end-users for game play, must have a password signon with two-level codes comprising the personal identification code and a personal password:

- a. The personal identification code must have a length of at least six ASCII characters; and
- b. The personal password must have a minimum length of six alphanumeric characters, which should include at least one nonalphanumeric character.

- 54.66. An electronic ~~pull-tab~~pull-tab operating system must have the capability to control potential data corruption that can be created by multiple simultaneous log on by system management personnel.
- a. An electronic ~~pull-tab~~pull-tab operating system must specify which of the access levels allow for multiple simultaneous sign on by different users and which of the access levels do not allow for multiple sign on, and if multiple sign on are possible, what restrictions, if any, exist; or
- b. If an electronic ~~pull-tab~~pull-tab operating system does not provide adequate control, a comprehensive procedural control document must be drafted for the attorney general's review and approval.
- 55.67. Where the site operating system or components are linked with one another in a local network for function sharing or other purposes, communication protocols must be used which ensure erroneous data or signals will not adversely affect the operations of any such system or components.
- 56.68. Dedicated and protected network connections prohibiting unauthorized access, may allow two or more central computer systems to share information. Deal details and other information prohibited from being viewed, as outlined in other sections of these rules, must not be available or transmitted between the connected systems or facilities.
- 57.69. The central computer system may be used to record the data used to verify game play and to configure and perform security checks on electronic ~~pull-tab~~pull-tab devices provided such functions do not affect the security, integrity, or outcome of such games.
- 58.70. Central computer system software components and modules must be verifiable by a secure means at the system level denoting program identification and version. The central computer system must have the ability to allow for an independent integrity check of the components and modules from an outside source and is required for all control programs that may affect the integrity of the central computer system. This must be accomplished by being authenticated by a third-party device, which may be embedded within the central computer system software or having an interface port for a third-party device to authenticate the media. This integrity check will provide a means for field verification of the central computer system components/modules to identify and validate the programs and files. The test laboratory, prior to system approval, must approve the integrity check method.
- 59.71. Following the initiation of a nonvolatile memory reset procedure, the game program must execute a routine, which initializes all bits in critical nonvolatile memory to the default state. All memory locations intended to be cleared as per the nonvolatile memory clear process must be fully reset in all cases. For electronic ~~pull-tab~~pull-tab devices that allow for partial nonvolatile memory clears, the methodology in doing so must be accurate.
- 60.72. The default game display immediately after a nonvolatile memory reset must not be the advertised top prize on any selectable line. The default game display, upon entering game play mode, must also not be the advertised top prize.
- 61.73. It must not be possible to change a configuration setting that causes an obstruction to the electronic accounting meters without a nonvolatile memory clear. Notwithstanding, a change to the denomination must be performed by a secure means, which includes access to the locked logic compartment or other secure method provided that the method can be controlled by the attorney general.
- 62.74. Critical memory is used to store all data that is considered vital to the continued operation of the electronic ~~pull-tab~~pull-tab device. This includes:

- a. All electronic meters required in subsection ~~33 of section 99-01.3-16-09.645~~, including last currency data and power up and door open metering;
- b. Current credits;
- c. Electronic ~~pull-tab~~pull-tab device game configuration data;
- d. Information pertaining to the last ten plays with the play outcome;
- e. Software state;
- f. Any prize structure configuration information residing in memory; and
- g. A log of the last one hundred significant events.

~~63.75.~~ Critical memory storage must be maintained by a methodology that enables errors to be identified. This methodology may involve signatures, checksums, partial checksums, multiple copies, timestamps, or effective use of validity codes, or any combination.

~~64.76.~~ Comprehensive checks of critical memory must be made following game initiation but prior to display of game outcome to the player. Critical memory must be continuously monitored for corruption. The methodology must detect failures with an extremely high level of accuracy.

~~65.77.~~ An unrecoverable corruption of critical memory must result in an error. The memory error should not be cleared automatically and should result in a tilt condition, which facilitates the identification of the error and causes the electronic ~~pull-tab~~pull-tab device to cease further function. The critical memory error should also cause any communication external to the electronic ~~pull-tab~~pull-tab device to immediately cease. An unrecoverable critical memory error must require a full nonvolatile memory clear performed by a licensed distributor.

~~66.78.~~ Nonvolatile memory space that is not critical to the security of the electronic ~~pull-tab~~pull-tab device is not required to be validated.

~~67.79.~~ Program storage device means the media or an electronic device that contains the critical control program components. Device types include EPROMs, compact flash cards, optical disks, hard drives, solid state drives, USB drives, etc. All program storage devices must:

- a. Be housed within a fully enclosed and locked logic compartment;
- b. Be clearly marked with sufficient information to identify the software and revision level of the information stored in the device. In the case of media types on which multiple programs may reside it is acceptable to display this information via the attendant menu;
- c. Validate themselves during each processor reset;
- d. Validate themselves the first time they are used; and
- e. CD-ROM, DVD, and other optical disk-based program storage must:
 - (1) Not be a rewritable disk; and
 - (2) The "session" must be closed to prevent any further writing.

~~68.80.~~ Electronic ~~pull-tab~~pull-tab devices that have control programs residing in one or more PROMs must employ a mechanism to verify control programs and data. The mechanism must use a cyclic redundancy check of at least sixteen bits.

~~69.81.~~ Non-EPROM program storage must meet the following rules:

- a. The software must provide a mechanism for the detection of unauthorized and corrupt software elements, upon any access, and subsequently prevent the execution or usage of those elements by the electronic ~~pull-tab~~pull-tab device. The mechanism must employ a hashing algorithm which produces a message digest output of at least one hundred twenty-eight bits;
- b. In the event of a failed authentication, after the electronic ~~pull-tab~~pull-tab device has been powered up, the terminal immediately should enter an error condition and display an appropriate error. This error must require operator intervention to clear and must not clear until the data authenticates properly, following the operator intervention or the media is replaced or corrected, and the electronic ~~pull-tab~~pull-tab device's memory is cleared.

~~70.82.~~ Alterable media must meet the following and additional rules:

- a. Employ a mechanism that tests unused or unallocated areas of the alterable media or unintended programs or data and tests the structure of the media for integrity. The mechanism must prevent further play of the electronic ~~pull-tab~~pull-tab device if unexpected data or structural inconsistencies are found;
- b. Employ a mechanism for keeping a record any time a control program component is added, removed, or altered on any alterable media. The record must contain a minimum of the last ten modifications to the media and each record must contain that date and time of the action, identification of the component that affected the reason for the modification, and any pertinent validation information.

~~74.83.~~ Program storage devices that do not have the ability to be modified while installed in the electronic ~~pull-tab~~pull-tab device during normal operation must be marked clearly with sufficient information to identify the software and revision level of the information stored in the devices.

History: Effective July 1, 2018; amended effective January 1, 2023.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-11. Sales invoice.

1. A manufacturer may not sell or provide to or accept from a distributor deals of pull tabs, paper bingo cards, fifty-fifty raffle system, site system with bingo card-marking devices, electronic quick shot bingo site operating system with card-marking devices and related equipment, electronic pull-tab device with operating system, and related equipment, or ~~pull-tab~~pull-tab dispensing devices without recording the transaction on a sales or credit invoice. The invoice must include:
 - a. License number, business name, and address of the distributor;
 - b. Business name and address to which the gaming equipment is shipped;
 - c. Invoice number and date;
 - d. Date shipped;
 - e. Indication for a credit invoice;
 - f. Quantity of deals of pull tabs and paper bingo cards;

- g. Description of each deal of pull tabs and paper bingo cards sold, including the name of the game and game serial number which may be listed on an addendum to a sales invoice. For a deal of pull tabs involving two-ply or three-ply cards with perforated break-open tabs, the description must include the manufacturer's form number;
 - h. For paper bingo cards, quantity, primary color, type of collated booklet, serial number, size of series, and number of faces on a card;
 - i. Name, model, and serial number of a ~~pull tab~~pull-tab dispensing device;
 - j. Name, model, and serial number of an electronic pull-tab dispensing device;
 - k. Name, model, and serial number of a site system for bingo card-marking devices and number of bingo card-marking devices provided;
 - ~~k.l.~~ Name, model, serial number, and control program code of an electronic quick shot bingo site operating system and number of card-marking devices provided;
 - ~~l.m.~~ For electronic bingo cards, quantity of bingo cards played; and
 - ~~m.n.~~ Name, model, serial number, and control program code of a fifty-fifty raffle system.
2. A manufacturer shall file a copy of each sales invoice issued to an organization on behalf of a distributor for rent of a bingo card-marking device, by the fifth business day following the month of the transaction.

History: Effective May 1, 1998; amended effective July 1, 2000; October 1, 2006; July 1, 2010; July 1, 2012; April 1, 2016; July 1, 2018; January 1, 2023.

General Authority: NDCC 53-06.1-01.1

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